

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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In the Matter of:	:
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	:
GAME SHOW NETWORK, LLC,	: MB Docket No.
Complainant,	: 12-122
	:
v.	: File No.
	: CSR-8529-P
CABLEVISION SYSTEMS CORP.,	:
Defendant,	:
	:
Program Carriage Complaint	:

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Tuesday,  
July 7, 2015

Volume I

Hearing Room A  
Room TW-A363  
445 12th Street, S.W.  
Washington, DC

The above-entitled matter came on for hearing, pursuant  
to notice, at 10:06 a.m.

BEFORE: THE HONORABLE RICHARD L. SIPPEL,  
Chief Administrative Law Judge

APPEARANCES:On Behalf of the Defendant, Cablevision Systems Corporation:

JAMES BOROD, ESQ.  
 GARY CARNEY, ESQ.  
 JAY COHEN, ESQ.  
 ANDREW GORDON, ESQ.  
 GEORGE KROUP, ESQ.  
 Of: Paul, Weiss, Rifkind, Wharton & Garrison LLP  
 1285 Avenue of the Americas  
 New York, NY 10019  
 Tel: (212) 373-3449 (Borod)  
       (212) 373-3051 (Carney)  
       (212) 373-3163 (Cohen)  
       (212) 373-3543 (Gordon)  
       (212) 373-3480 (Kroup)  
 Fax: (212) 492-0449 (Borod)  
       (212) 492-0051 (Carney)  
       (212) 492-0163 (Cohen)  
       (212) 492-0543 (Gordon)  
       (212) 492-0480 (Kroup)  
 Email: [jborod@paulweiss.com](mailto:jborod@paulweiss.com)  
       [gcarney@paulweiss.com](mailto:gcarney@paulweiss.com)  
       [jaycohen@paulweiss.com](mailto:jaycohen@paulweiss.com)  
       [agordon@paulweiss.com](mailto:agordon@paulweiss.com)  
       [gkroup@paulweiss.com](mailto:gkroup@paulweiss.com)

On Behalf of the Complainant, Game Show Network, LLC:

LAURA FLAHIVE-WU, ESQ.  
 PAUL W. SCHMIDT, ESQ.  
 STEPHEN A. WEISWASSER, ESQ.  
 Of: Covington & Burling LLP  
 One CityCenter  
 850 Tenth Street, N.W.  
 Washington, DC 20001  
 Tel: (202) 662-5982 (Flahive-Wu)  
       (202) 662-5272 (Schmidt)  
       (202) 662-5508 (Weiswasser)  
 Fax: (202) 662-6291  
 Email: [lflahivewu@cov.com](mailto:lflahivewu@cov.com)  
       [pschmidt@cov.com](mailto:pschmidt@cov.com)  
       [sweiswasser@cov.gov](mailto:sweiswasser@cov.gov)

and

C. WILLIAM PHILLIPS, ESQ.  
JONATHAN M. SPERLING, ESQ.  
Of: Covington & Burling LLP  
The New York Times Building  
620 Eighth Avenue  
New York, NY 10018  
Tel: (212) 841-1081 (Phillips)  
(212) 841-1153 (Sperling)  
Fax: (212) 841-1010  
Email: [cphillips@cov.com](mailto:cphillips@cov.com)  
[jsperling@cov.com](mailto:jsperling@cov.com)

On Behalf of the FCC Enforcement Bureau:

PAMELA S. KANE, ESQ.  
Investigations and Hearings Division  
Enforcement Bureau  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554  
Tel: (202) 418-2393  
Fax: (202) 418-2080  
Email: [pamela.kane@fcc.gov](mailto:pamela.kane@fcc.gov)

WILLIAM H. KNOWLES-KELLETT, ESQ.  
Investigations and Hearings Division  
Enforcement Bureau  
Federal Communications Commission  
1270 Fairfield Road  
Gettysburg, PA 17325  
Tel: (717) 338-2505  
Fax: (717) 338-2698  
Email: [wkellelett@fcc.gov](mailto:wkellelett@fcc.gov)

ALSO PRESENT:

AUSTIN RANDAZZO, FCC OALJ  
PAMELA SMITH, FCC OALJ  
NICHOLAS HALL, FCC OALJ Intern  
MASON FITCH, FCC OALJ Intern

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Off the Record: 6:10 p.m.

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P-R-O-C-E-E-D-I-N-G-S

(10:06 a.m.)

JUDGE SIPPEL: Good morning. Please be seated. I'm sorry because the air is rather still in here. This is going to be -- it's going to get problematic, and has already for me. So we're not -- going to keep that door open.

If we take confidential -- if we go into a confidential session I'm going to put a sentry right outside the door to be sure nobody is near enough to get anything. If that doesn't -- I hope that satisfies everybody. And it's going to get to the point where you're going to be welcome to take your jackets off, because I don't think I'm going to work -- this thing is some kind of a -- it's not cotton, that's for sure.

(Laughter.)

Let me show you where we are. We are, let's see, I had this blocked just upstairs. May 9, 2012, the Media Bureau issued hearing designation order in Docket Number 12-122. That's MB Docket 12-122. That's May of 2012. May of 2012. 2012, '13, '14, '15, four years ago. Four years ago. And the only thing that's been done is setting the table for the trial that is scheduled today. So that's a big investment in time and money. But so this thing should be, this should really be a Cadillac case by now, huh?

(Laughter.)

MR. COHEN: We'll do our best.

JUDGE SIPPEL: I'm not worried about a thing. Okay. So

1 here we are today. I want to just, as a preliminary matter, I want  
2 to say I received a piece of correspondence from I think it was Tom  
3 Daley. You probably don't have privy to it, but basically there  
4 was a short letter just simply saying that they were asking me to  
5 respect the public interest in having as much information made  
6 available as possible.

7 I think we went through this before, but there is, there  
8 is a Supreme Court case that says that I have to do it in a way  
9 that's the least, the least offensive to the listening public, to  
10 put it broadly, that way. So just keep that in mind. So I'm going  
11 to be looking for excuses to make public some things that you don't  
12 -- that you think should be still kept confidential.

13 I understand you've done a lot of work yesterday, and let  
14 me tell you, we did a hell of a lot of work yesterday. And the  
15 interns are finally learning that what you do yesterday isn't  
16 necessarily going to be applicable today. And I appreciate your  
17 doing that. But, man, I wish I had a little bit of more advance  
18 notice because we worked our butts off to go through all your  
19 objections and decide, you know, get familiarity with the documents  
20 and get a feel as to what we wanted to do with them. So I just  
21 caution you in that -- I'm not cautioning you, I'm just passing the  
22 information on for whatever it's worth. Maybe it's that we're not  
23 in a very good mood.

24 MR. COHEN: Your Honor.

25 JUDGE SIPPEL: Yes, sir?

1 MR. COHEN: If I could try to lighten the mood.

2 JUDGE SIPPEL: Yes, sir, please do.

3 MR. COHEN: Mr. Schmidt and I -- if I could hand this up  
4 -- have prepared, and we've shared this with the Enforcement  
5 Bureau, we have prepared a rather lengthy list of all the exhibits  
6 to which there will be no objections, which I'm not sure Your Honor  
7 has.

8 JUDGE SIPPEL: Well we, you know, we've had these lengthy  
9 lists.

10 MR. COHEN: With objections.

11 JUDGE SIPPEL: Yes.

12 MR. COHEN: Yes.

13 JUDGE SIPPEL: So I have lengthy lists.

14 MR. COHEN: Yes. But what I'd like to do, Your Honor, if  
15 I can, is there are several hundred exhibits --

16 JUDGE SIPPEL: Please. Please.

17 MR. COHEN: -- for which there are no --

18 JUDGE SIPPEL: Please.

19 MR. COHEN: May I approach?

20 JUDGE SIPPEL: Please.

21 MR. COHEN: -- for which there are no objections. And  
22 what we would suggest, if it's, if Your Honor is amenable, that all  
23 of the exhibits, both Cablevision and GSN exhibits that are on this  
24 list --

25 JUDGE SIPPEL: Yes.

1 MR. COHEN: -- simply be admitted now at the beginning of  
2 the trial to save a lot of time. And I think we're prepared to  
3 discuss the objections in a couple of categories, because there are  
4 a lot of documents, but we think the objections fall in a few  
5 different categories. And Mr. Schmidt can add to that.

6 MR. SCHMIDT: Yes. We're really down to two categories.  
7 We're sorry we didn't get this to Your Honor before, if we would  
8 have known that Your Honor was going through them we would have  
9 gotten it before.

10 JUDGE SIPPEL: You could have gotten it to me in May of  
11 2012.

12 MR. SCHMIDT: Yes. We were working a long time to reach  
13 agreement.

14 JUDGE SIPPEL: I hear you. I hear you.

15 MR. SCHMIDT: I think we're down to two categories. The  
16 other thing I would say is on the confidential point. We were very  
17 mindful of what Your Honor said on the phone the other day about  
18 respecting the public record. Mr. Cohen and I spoke and we think,  
19 certainly, the openings are not going to require any closing of  
20 court. We've kind of sanitized our openings, so to speak, to make  
21 it --

22 JUDGE SIPPEL: Thank you.

23 MR. SCHMIDT: -- such that it's not an issue. And then  
24 we'll be very mindful about it as we go through the individual  
25 witnesses. Thank you very much.



1 JUDGE SIPPEL: That's about all I can ask for right now.  
2 Mr. Cohen, thank you. So you're all in agreement with this?

3 MR. COHEN: Yes.

4 JUDGE SIPPEL: With this?

5 MR. COHEN: Yes.

6 JUDGE SIPPEL: And are these the documents that you're  
7 stipulating can be admitted?

8 MR. COHEN: Yes, Your Honor.

9 JUDGE SIPPEL: All these that are on here?

10 MR. COHEN: Yes. And if it makes any sense maybe to mark  
11 this as a Court --

12 JUDGE SIPPEL: Let's mark it as a --

13 MR. COHEN: -- Court exhibit.

14 JUDGE SIPPEL: -- as a Court exhibit. Let's call this,  
15 we'll call this ALJ Exhibit 1. It's already been explained in the  
16 record what it is.

17 (Whereupon, the above-referred to document was  
18 marked as ALJ Exhibit 1 for identification.)

19 Any objection to putting this in the record as an  
20 exhibit?

21 MR. SCHMIDT: No, Your Honor.

22 JUDGE SIPPEL: It's the first exhibit.

23 MR. SCHMIDT: And so, Your Honor, may we treat all the  
24 exhibits on that list as admitted into evidence?

25 JUDGE SIPPEL: Yes, you may.

1 MR. SCHMIDT: Okay, thank you, Your Honor.

2 JUDGE SIPPEL: And we'll catch up with things with the  
3 court reporter. You know, we've got the stickers and all that kind  
4 of stuff.

5 MR. SCHMIDT: Yes. Yes.

6 JUDGE SIPPEL: That should not involve you, unless I  
7 decide to use that as a contempt filing.

8 (Laughter.)

9 JUDGE SIPPEL: So I get the first exhibit.

10 (Whereupon, the above-referred to document was  
11 received in evidence as ALJ Exhibit 1.)

12 Now before we go any further, I'm going to, I'm going to  
13 introduce my staff and you all can make your appearances. I have  
14 with me Mr. Randazzo. And next to him is Pam Smith from General  
15 Counsel's Office. And Monique Gray is down the end. She's  
16 replaced Mary Gosse as our -- I can never keep these words  
17 straight so I keep referring to her as an Office Manager, and  
18 Personnel gets mad at me for doing that. But that's all right,  
19 she's going to get the same grade and the same pay, whatever I call  
20 it.

21 And then we have two interns with us, Mr. Nicholas Hall.  
22 There he is. And Mr. Mason Fitch. And, I'm sorry, where did you  
23 go to school? Where are you going to school, I'm sorry?

24 MR. HALL: Georgetown.

25 JUDGE SIPPEL: And Mason?

1 MR. FITCH: I'm at NYU.

2 JUDGE SIPPEL: NYU. NYU and Georgetown. Okay. Heavy  
3 hitters. I've been deliberately -- you know, I took the, I  
4 confiscated the Wall Street Journal this morning because it has a  
5 front page article, lower fold but front page, about interns  
6 clerking, interning in New York law firms who are kayaking, they're  
7 bike riding, they're seeing plays, baseball games, and then they go  
8 back to the office and they see some demonstration of cross-  
9 examination. And they get paid a lot for this.

10 MR. COHEN: Your Honor, is there a Fifth Amendment  
11 privilege in this courtroom?

12 (Laughter.)

13 JUDGE SIPPEL: I'm not going to ask any questions. I just  
14 -- it's a newspaper article, which I never allow in evidence  
15 anyway, you know that. So I'm saying right here to them today,  
16 they're getting, they're getting an absolutely incredible education  
17 here. This is better than any Wall Street law firm is doing,  
18 interning at a Wall Street law firm. They're going to get the  
19 deal.

20 Now they're not going to get the kayaking, but they get  
21 air conditioning and they get a nice office, and they have some  
22 kind of a computer. At least it's got DOS on it now and Paint.  
23 But, okay.

24 So at the end of this they're going to be very  
25 appreciative of the fact that they're not interning in a fancy New

1 York law firm. I shouldn't say fancy, but prestigious New York law  
2 firm, and we have some good ones here in Washington too by the way.  
3 All right, we're going to start now with introduction of counsel.  
4 Let's say, let's get your report from counsel.

5 MS. KANE: Pamela Kane with the Enforcement Bureau, your  
6 honor.

7 JUDGE SIPPEL: And with you?

8 MS. KANE: With me is William Knowles-Kellett.

9 JUDGE SIPPEL: Good morning. Good morning. And for Game  
10 Show?

11 MR. SCHMIDT: Paul Schmidt for GSN. And with me is  
12 Jonathan Sperling, Laura Flahive-Wu. And Your Honor will remember  
13 Will Phillips.

14 JUDGE SIPPEL: Yes, indeed.

15 MR. PHILLIPS: Good morning, Your Honor. Good to see you  
16 again.

17 MR. SCHMIDT: We have a large contingent, Your Honor.

18 JUDGE SIPPEL: Mr. Phillips, you bounced to Washington,  
19 DC?

20 MR. PHILLIPS: That's right. Well, we had to counter the  
21 New York team across the table from us.

22 JUDGE SIPPEL: It's not that you don't trust them, right?  
23 It's the talent.

24 MR. PHILLIPS: No, I've actually known Mr. Cohen for 30  
25 years now. I know the talent.

1 MR. SCHMIDT: And, Your Honor, if I could introduce one  
2 more.

3 JUDGE SIPPEL: Yes, please.

4 MR. SCHMIDT: You've got a good team but I do want to  
5 point out our GSN representative Mark Feldman. When Your Honor  
6 talks about how long this has been going on I don't think anyone  
7 feels it more than Mr. Feldman. So we're very happy to be here.

8 JUDGE SIPPEL: Yes, I'm thinking of you, Mr. Feldman, and  
9 others too. And for Cablevision?

10 MR. COHEN: Yes, Your Honor. I'm Jay Cohen from Paul  
11 Weiss.

12 JUDGE SIPPEL: Yes, sir.

13 MR. COHEN: Andrew Gordon who will also have a speaking  
14 role. Mr. Carney who you might remember from Wealth. And Mr.  
15 George Kroup.

16 JUDGE SIPPEL: Yes, indeed.

17 MR. CARNEY: Good morning, Your Honor.

18 MR. COHEN: And Mr. Kroup right there. And we have a  
19 couple of Cablevision folks: Mr. Ellen, the General Counsel, just  
20 walked in.

21 JUDGE SIPPEL: Mr. Ellen.

22 MR. ELLEN: Good morning, Your Honor.

23 MR. COHEN: And our defined representative is Mr. Shapiro.

24 JUDGE SIPPEL: Mr. Shapiro.

25 MR. COHEN: Who, like, Mr. Feldman I think signed the

1 protective orders and they can, they have broader access with the  
2 witnesses.

3 JUDGE SIPPEL: Fine, fine. Okay, so nobody has any  
4 objection to who's in the courtroom. There may be a need of a  
5 person -- I don't know, I'm not going to ask them to identify  
6 themselves. And you know who we are and we know who you are.

7 So the first order of business is the opening statements.  
8 It's going to be warm in here. After, it reaches the point that  
9 you want to take a break, I think I can survive it, but I may, I  
10 may start peeling off my robe before you get finished. And if I  
11 take my robe off that's your signal to, if you want to take your  
12 jackets off, go ahead, because this is unbearable.

13 They were working on it. They were down here working on  
14 it yesterday. I was getting their assurances and everything. One  
15 thing they did do is they cleared the chairs out of the passageway  
16 there because that's a fire hazard. This is not a fire hazard,  
17 this is an inconvenience. I don't know where they put their  
18 priorities.

19 MR. COHEN: Your Honor, may I ask a question?

20 JUDGE SIPPEL: Yes, sir.

21 MR. COHEN: So the only thing that Mr. Schmidt and I had  
22 discussed about whether it made sense to resolve before the  
23 opening, and it's entirely up to Your Honor, we'll live with it  
24 either way, is there are two categories of documents that I think  
25 cover, or two categories of objections that cover almost all of --

1 JUDGE SIPPEL: Right. Right.

2 MR. COHEN: -- the documents. We have an objection to  
3 post-tiering evidence. Our position is that evidence after the  
4 time of the reached tiering decision is certainly after the time  
5 the complaint was filed with the Commission, should not be  
6 admissible. There's going to be a lot of evidence about that on  
7 the other side. And they have a, you know, an objection to a group  
8 of documents which I should let Mr. Schmidt describe.

9 But those two groups I think actually would resolve all  
10 of the objections. And I don't know whether Your Honor wants to  
11 deal with those now.

12 JUDGE SIPPEL: Would it be convenient to you? What do you  
13 want to do? You're the ones that --

14 MR. SCHMIDT: I actually think Your Honor's ruling on the  
15 first one of those documents in each category will guide the rest  
16 of the documents. I'm fine arguing it now. I think it can also  
17 happen as we go through the documents. I suspect a lot of it's  
18 going to fall away as we go through the documents.

19 JUDGE SIPPEL: Why do I always have to make the decisions.  
20 Okay, go ahead, let me hear your argument.

21 MR. SCHMIDT: Sure.

22 JUDGE SIPPEL: And describe again what this grouping of  
23 documents is?

24 MR. SCHMIDT: The first group, as Mr. Cohen said, is the  
25 post-tiering documents. These are documents where literally the

1 date fallows after the February --

2 JUDGE SIPPEL: The tiering.

3 MR. SCHMIDT: -- the February 1st, yes, 2011 --

4 JUDGE SIPPEL: February 1st tiering.

5 MR. SCHMIDT: -- date for the tiering. Our view is some  
6 of those documents actually reach back in time. They talk about  
7 earlier events. So there's not really a relevance argument as to  
8 those.

9 As to the rest, what we have alleged very clearly is that  
10 this was not a single act of discrimination, it's an act of  
11 discrimination that's continued up until the present date because,  
12 of course, up until this time the differential treatment remains,  
13 in terms of the tiering.

14 The documents are relevant for other reasons in terms of  
15 showing the direction that the network was moving in. But really  
16 our main argument is that they didn't discriminate against us and  
17 then everything was okay, they took a step that they continued to  
18 take up until today. Even on this date their conduct remains a  
19 violation of Section 616, and that makes documents relevant right  
20 up until the present date.

21 JUDGE SIPPEL: Well, you're not suggesting that this is a  
22 continuing, it's a continuing violation every day that --

23 MR. SCHMIDT: That is what we're suggesting. Because --

24 JUDGE SIPPEL: So if I were to assess a fine, or whatever  
25 they call it these days, I could do it on a daily basis? I could



1 give them the maximum for every day?

2 MR. SCHMIDT: Well, I think the fine is based on the one  
3 act. But the remedy takes into account, in terms, of what we're  
4 seeking, equal carriage, the remedy takes into account that it  
5 continues until this day. So I don't think it changes the fine, I  
6 just think it goes to the remedy and the evidence.

7 JUDGE SIPPEL: Well, okay, let me phrase it this way then.  
8 Let's say you were tiered on February 11th. And at the end of  
9 February -- I'm sorry, not the end of February -- the next month  
10 you just decided to pick up your, pick up your marbles and leave  
11 and get something else, maybe TWC you have an agreement to carry  
12 you there, and you just thumb your nose up at Cablevision and say,  
13 good bye, Charlie. Would you have a remedy here? Would you have  
14 a cause of action in this proceeding?

15 MR. SCHMIDT: I think it would depend on the circumstances  
16 of us leaving. Another example would be if in February they tiered  
17 us and in April they said, you know what, we did something wrong.  
18 We're going to put you back. Then the cause of action, the  
19 discrimination, would be those two months.

20 Here we have the opposite. Here we have in February they  
21 tiered us. To this date they're still tiering us, and we're still  
22 trying to get the broader carriage that we think under Section 616  
23 we're entitled to. And so that makes our current status relevant.

24 JUDGE SIPPEL: Well, I hear you. What I'm saying is that  
25 if you did that, let's say that you had a ferocious public interest

1 general counsel -- this is no reflection on anybody, please -- or  
2 somebody within the organization that had authority and they said,  
3 You know, that was wrong for them to do that. I don't care if we  
4 have tiering with TWC, it was wrong. They should be punished for  
5 it. We should be like one of those paladin-type guys, we should go  
6 after them.

7           Would I allow that to happen? Assume -- well even, let's  
8 say, would the Commission allow that to happen? Would they, in  
9 other words, would they set it down for hearing?

10           MR. SCHMIDT: I think I'm missing some of the facts that  
11 Your Honor is thinking of. But if they discriminated against us,  
12 and kept discriminating against us --

13           JUDGE SIPPEL: No, no, no, they're not keeping. You're  
14 gone. You're gone.

15           MR. SCHMIDT: If for some reason it stops then --

16           JUDGE SIPPEL: You left. You left the Cablevision deal,  
17 you've walked over and made a better deal with TWC, so you don't  
18 care about them anymore in that respect. You're just angry because  
19 there was this violation of your rights during this period of time,  
20 and you're just angry about it. And they should be, they should be  
21 penalized at least with a fine.

22           MR. SCHMIDT: Yes, that's, that's not what we have here.  
23 What we have here is something that's --

24           JUDGE SIPPEL: But you don't, you don't think the  
25 Commission would entertain that?

1 MR. SCHMIDT: If we were forced away because we couldn't  
2 get fair carriage, and if we were given fair carriage we would take  
3 it, that would be a claim. If we were forced to rate and we said,  
4 you know what, we don't want to do this anymore, then that might  
5 not be a claim.

6 That's not what we have here. What we have here is  
7 something where my client continues to seek fair carriage to this  
8 date, continues to suffer from not getting fair carriage to this  
9 date. This is not about, kind of, social good, it's about --

10 JUDGE SIPPEL: Yes.

11 MR. SCHMIDT: -- them getting fair treatment in the  
12 marketplace.

13 JUDGE SIPPEL: I understand what this is then. I'm just  
14 going on a hypothetical.

15 MR. SCHMIDT: Yes.

16 JUDGE SIPPEL: So you even gave me another twist. You  
17 said if they forced you out and you got a better deal. We would  
18 handle that an entirely different way.

19 MR. SCHMIDT: Yes.

20 JUDGE SIPPEL: You wouldn't still have a claim against  
21 them.

22 MR. SCHMIDT: Right. And it's not a better deal because  
23 it's a different deal with different customers --

24 JUDGE SIPPEL: Yes.

25 MR. SCHMIDT: -- and a different base. WE can never get

1 access to their customers without having to deal with them. That's  
2 why Section 616 exists, because it's not like we can replace their  
3 customers with other people. We already have deals with other,  
4 with other carriers. Their customers are unique to them. The only  
5 way to get access to their customers is through them. That's the  
6 market --

7 JUDGE SIPPEL: And they would be, and those same customers  
8 would be unique to you?

9 MR. SCHMIDT: They would be unique to us, if we had access  
10 to them.

11 JUDGE SIPPEL: I see they've got -- your trial brief says  
12 they've got a base, base of customers of about 3.5 million, 3  
13 million of them are from New York City. Are they Mets fans or  
14 Yankee fans?

15 (Laughter.)

16 MR. COHEN: Mostly Mets fans.

17 MR. SCHMIDT: I think they're Yankee fans.

18 JUDGE SIPPEL: See, we can't even agree to that.

19 (Laughter.)

20 JUDGE SIPPEL: Nothing is what it seems. Okay, okay. So  
21 I see what you're saying. I hear what you're saying. So you want  
22 to put this evidence in. It's post-tier evidence to show a course  
23 of conduct leading up to the present. But the violation, the  
24 actual violation is at what point in time?

25 MR. SCHMIDT: It's a time period. It's February 1, 2011

1 up until the present. Until they fix it, they're violating.

2 JUDGE SIPPEL: Okay. So.

3 MR. SCHMIDT: That's, that's the violation. That's why  
4 the current material and material in that window is relevant.  
5 Until they fix the violation.

6 JUDGE SIPPEL: It keeps going and going and going, right?

7 MR. SCHMIDT: It keeps going while they do it. That's why  
8 we're here. If it were a discrete moment in time that might be a  
9 different. We do have a second act of discrimination that I'll  
10 talk about in my opening that is a discrete moment in time, that is  
11 a limited window in time where they did something just wrong.

12 But the main claim, the tiering claim is something that  
13 started on February 1, 2011 and continues today. We remain on the  
14 sports tier for Cablevision to this date, still suffering the same  
15 harm that we're here about in this case.

16 JUDGE SIPPEL: Well, all right. I'm not saying that  
17 you're going to win on this right now. But as of --

18 MR. COHEN: May I say something, Your Honor?

19 JUDGE SIPPEL: No, not yet. AS of today that continuing  
20 period stops as of the day of the trial. It may pick up late on if  
21 you're right, but right now I don't want any distractions with what  
22 happens tomorrow.

23 MR. SCHMIDT: Yes, I don't, we don't plan to do that, Your  
24 Honor.

25 JUDGE SIPPEL: Well, I want to be sure, you know.

1 MR. SCHMIDT: We now well understand Your Honor's wish.

2 JUDGE SIPPEL: I'm going to hear from you in just a  
3 minute. I just want to be sure I have this set. What about on the  
4 statute -- so the statute of limitations you say anything -- again  
5 it's -- well, let me put it, it's a continuing statute of  
6 limitations, basically.

7 MR. SCHMIDT: Yes.

8 JUDGE SIPPEL: It's a sliding. Okay.

9 MR. SCHMIDT: Yes.

10 JUDGE SIPPEL: So we don't have to worry about one  
11 particular date, from your standpoint, we don't have to take one  
12 particular day and say you filed too late or you sat on your  
13 laurels or anything like that, right?

14 MR. SCHMIDT: I don't, I don't think there's any statute  
15 of limitations argument in this case.

16 JUDGE SIPPEL: I didn't see it raised and I didn't even  
17 see it, I don't think it's in the hearing designation letter.

18 MR. COHEN: I'll address this, Your Honor, when you give  
19 me a chance.

20 JUDGE SIPPEL: Okay. Is that it?

21 MR. SCHMIDT: There's a second category of documents.  
22 That's where Cablevision has objected, their one category. Our one  
23 category of documents is there are certain third party documents  
24 that Cablevision has used. And our basic point is there's no  
25 foundation for those documents. They don't have witnesses from

1 those third parties coming in and testifying.

2 JUDGE SIPPEL: Well okay. So let's take these one bunch  
3 at a time.

4 MR. SCHMIDT: Okay.

5 JUDGE SIPPEL: It's Group A and Group B. The Group A  
6 documents. Now it's your turn, Mr. Cohen.

7 MR. COHEN: Your Honor, the first time that GSN said this  
8 case was a continuing violation was in response to our motion in  
9 limine to exclude this evidence. They didn't plead a continuing  
10 violation. There's nothing in the carriage complaint that was  
11 filed that deals with a continuing violation. In 2013, Your Honor  
12 will recall the case got delayed for a while.

13 JUDGE SIPPEL: Yes, I remember that.

14 MR. COHEN: -- because of The Tennis Channel decision.

15 JUDGE SIPPEL: I remember that.

16 MR. COHEN: We came back and we served discovery. And  
17 Your Honor allowed in the order for supplemental discovery. And we  
18 served these interrogatories on GSN in June of 2014, three years  
19 after the retiering. And we made clear that we were asking about  
20 continuing similarity of the programming.

21 JUDGE SIPPEL: Yes.

22 MR. COHEN: Only for defensive purposes, and we didn't  
23 think it was relevant. And we asked them in Interrogatory 28 --  
24 and I can give Your Honor a copy if you'd like it -- to give us all  
25 documents created between July 6, 2012 and December 31, 2013,

1 relating to or supporting the assertions in the complaint that GSN  
2 competes with WE and Wedding Central for audiences programming and  
3 time and the like.

4 And what they said in their objection was that documents  
5 created between July 6, 2012 and December 2013 relating or  
6 supporting to the assertions in the complaint would, by virtue of  
7 their date, have no bearing on the factual and legal issues in this  
8 case.

9 So in 2014, three years after they filed their complaint,  
10 they took the position in discovery that post-retiering evidence,  
11 evidence in 2012 and 2013, was irrelevant. And they were right,  
12 Your Honor.

13 The fact of the matter is, and remember all of this kind  
14 of comes from the discrimination law, all of these affiliations or  
15 arguments that got made. The law is pretty clear in discrimination  
16 cases, the law is you have to show a violation on the day you filed  
17 your complaint. And the fact that we may have discriminated after  
18 the fact, which of course we didn't --

19 JUDGE SIPPEL: Yes.

20 MR. COHEN: -- has no bearing on the validity of the  
21 carriage complaint that they filed and the carriage complaint that  
22 was the subject of the HDO. So there was no claim. Your Honor can  
23 go back and look at the complaint. They never pled a continuing  
24 violation. They pled that the violation was the retiering event.

25 Now, Your Honor, some of our objections are close in time



1 to retiering in February, so I understand you know if the document  
2 was created on March, you know, 1 of 2011 it might reach back a  
3 couple of weeks. But what they are doing in this case is they are  
4 going to put on evidence about the programming in 2012 and 2013,  
5 evidence about their audience and the similarity to Cablevision's  
6 affiliated networks in 2012 and 2013, when what the case is about  
7 was, in part, were the networks similarly situated when they filed  
8 this complaint? Were they similarly situated when the retiering  
9 decision was made?

10 So, Your Honor, they've taken opposite positions  
11 throughout this case. The first time of continuing violation was  
12 in response to a limine motion a month ago. It's a complete waste  
13 of time, Your Honor. What if they actually changed the program?  
14 Let's say on January 1, 2014 they said what we're going to do is  
15 put all of the programming that's on WE on Game Show?

16 That's what we're going to do. We're going to come as  
17 close as we can without violating the copyright law. That would  
18 have no bearing on whether or not Cablevision discriminated when it  
19 made its carriage decision. It made its carriage decision based on  
20 where the network was at the end of 2010 when it communicated that  
21 decision. They filed the complaint in 2011. And this is complete  
22 bootstrapping, Your Honor. I mean the case is about what happened  
23 when we made our decision.

24 The second point I wanted to raise on the statute of  
25 limitations. We do think there is a statute of limitations issue

1 here, Your Honor. And Mr., I think, Schmidt, is going to talk  
2 about some of the issues that we think raises it. But the HDO  
3 excluded that from the trial. And --

4 JUDGE SIPPEL: Well, the HDO made its ruling on the  
5 merits?

6 MR. COHEN: It said that they would be reserved for the  
7 Commission. That's my recollection. That they would be reserved  
8 for the Commission after Your Honor's hearing. So Your Honor was  
9 not instructed. I can get the citation.

10 JUDGE SIPPEL: I've seen the ruling. I've seen the  
11 ruling.

12 MR. COHEN: We'll go back. And I'm quite confident, Your  
13 Honor, and I'll give you the citation at the next break. But so,  
14 yes, we think there's a statute of limitations issue here. But the  
15 HDO took that issue away from Your Honor, at least from the factual  
16 standpoint. But I didn't want to let the record reflect that we  
17 didn't think there was a statute of limitations issue. We assume  
18 we're preserving it for any appeal of Your Honor's decision.

19 JUDGE SIPPEL: Yes. Well, I will treat it that way as  
20 you've framed it. For the time being it is in the case. Whether  
21 or not I have authority to rule on it or not is a different story,  
22 but I'm very reluctant to give away authority, at this level  
23 anyway. I'm trying to put this in focus now. You know, it's like  
24 -- what was the date again -- it was February 11th?

25 MR. SCHMIDT: February 1st.

1 JUDGE SIPPEL: February 1, 2011.

2 MR. SCHMIDT: Yes.

3 JUDGE SIPPEL: I knew there was an 11 in that date.

4 MR. SCHMIDT: Yes, Your Honor.

5 JUDGE SIPPEL: February 2011 there was a -- you know let's  
6 say it was a prizefight, okay. The bell goes off. Bom. You know,  
7 hit the bell. You're out in the middle and everybody goes out in  
8 the middle of the ring to do their thing. The bell is -- you still  
9 get the echo of the bell.

10 Isn't that what's happening here? It's kind of like if  
11 you can't prove the violation on the date you allege you were  
12 tiered, or at least an on or about date there, you're out. But it  
13 doesn't, it doesn't handicap you putting evidence in for purposes  
14 of showing the impact of that, of that violation. It's like, it's  
15 like pain and suffering in a negligence case.

16 MR. COHEN: Let me be clear, Your Honor. We're not  
17 arguing --

18 JUDGE SIPPEL: You like that one, pain and suffering?

19 MR. COHEN: Yes. We're not, we're not arguing that they  
20 can't put in evidence to show the impact of the decision.

21 JUDGE SIPPEL: Okay.

22 MR. COHEN: And we in fact will put in evidence to show  
23 that we don't think there has been sufficient impact of that  
24 decision to amount to unreasonable restraint.

25 JUDGE SIPPEL: Post? Post-tiering?

1 MR. COHEN: Yes, yes, yes. That's the effect. That's  
2 your echo, Your Honor.

3 JUDGE SIPPEL: Yes.

4 MR. COHEN: But on the issue of whether or not the  
5 networks were similarly situated, there was a knock-out punch. And  
6 if they're similarly situated today, or yesterday, or two months  
7 ago, that doesn't change the fact that what they need to prove to  
8 sustain this complaint, which doesn't plead anywhere a continuing  
9 violation, is were they similarly situated on the day of the  
10 tiering. And --

11 JUDGE SIPPEL: Okay. I'll give you this hypothetical  
12 then. Let's say that I buy on to that and up had X facts on  
13 February 1, 2011, that were not as strong as the facts are say,  
14 well, the way this case gets stretched out, say in 2013. All of a  
15 sudden in 2013 Cablevision does some, makes some phenomenal move  
16 that makes an even more incredible, an alleged violation than it  
17 was back in 2011. So what do they have to do, they have to file  
18 another complaint with the Commission? Is that what they have to  
19 do?

20 MR. COHEN: Yes. Your Honor, yes, I think they do. I  
21 think the fact of the matter is when they file --

22 JUDGE SIPPEL: Right.

23 MR. COHEN: -- and when the Commission, you know, issued  
24 its opinion, issued its HDO --

25 JUDGE SIPPEL: Yes.

1 MR. COHEN: -- the finding was whether there were factual  
2 issues at the time of retiering.

3 JUDGE SIPPEL: Is the date that's referred to in the HDO?  
4 Are they that narrow with it?

5 MR. COHEN: You know, I am not exactly sure, Your Honor.  
6 I will have to check. But what I'm saying, Your Honor, is that if  
7 they can't prove it then, right, then none of the rest of this  
8 really makes a difference. I understand impact. We don't really  
9 disagree about that. They're going to show what they think the  
10 impact has been on them. They're entitled to show that. We're  
11 going to try to show it hasn't had any impact. I think, that,  
12 clearly you have to look at.

13 But the issue of whether the networks were similarly  
14 situated. After all, what's the issue here? Did Cablevision  
15 discriminate against the similarly-situated network? It made a  
16 decision in 2011 -- actually in 2010. It was communicated in 2010,  
17 and it became effective on February 1, 2011. And it made a  
18 decision to retier the network. If that network was not similarly  
19 situated on or about that day -- if they can show February 2 -- I'm  
20 not going to jump up and down.

21 JUDGE SIPPEL: I understand.

22 MR. COHEN: All right. But if they can't -- you know, but  
23 let's say in 2013, in the middle of this litigation, we're in  
24 litigation, they change their programming, which I think, Your  
25 Honor, that's what the evidence is going to show, they have changed

1 their programming in a material way, that doesn't have any impact  
2 on the 2011 decision.

3 JUDGE SIPPEL: Well, but doesn't that go, doesn't that go  
4 to the weight of that evidence? Doesn't that affect the weight of  
5 it?

6 MR. COHEN: I think it affects --

7 JUDGE SIPPEL: I mean we've got to find out on cross-  
8 examination why they did that.

9 MR. COHEN: Yes.

10 JUDGE SIPPEL: But I think I can handle that situation.  
11 But I haven't heard the evidence yet, so I'm going to reserve on  
12 it. But I just don't, I don't get it that -- I agree that a  
13 continuing violation from day to day to day to day, that's a bit  
14 much. But on the other hand I can't see where they would be put to  
15 filing another complaint if during the time you were in discovery,  
16 and all this lollygagging is going on, waiting for a panel up there  
17 in D.C. to come down with something, which I gave you. I think it  
18 was Game Show that asked for that. Did you ask for that, Mr.  
19 Cohen?

20 MR. SCHMIDT: I think we jointly asked for that, Your  
21 Honor.

22 MR. COHEN: We jointly asked for it.

23 JUDGE SIPPEL: It was joint?

24 MR. COHEN: Yes.

25 MR. SCHMIDT: We've been very cooperative on that.

1 JUDGE SIPPEL: Well I jointly gave it to you then. So  
2 things happen, you know. I mean we know this is a big world.  
3 Things do happen in the interim. And --

4 MR. COHEN: Your Honor, if I could go back to this--

5 JUDGE SIPPEL: Well, wait just a second.

6 MR. COHEN: Sorry, Your Honor.

7 JUDGE SIPPEL: There was no effort to have an agreement,  
8 say, you know, look, well you could agree to this. We've got this  
9 decision up there with panel such and such, why don't we make a  
10 deal with the judge, and we'll say that everything's frozen as of  
11 this date and we're not going to deal with it anymore. And maybe  
12 you can negotiate yourself back closer to February 2011.

13 You probably wouldn't negotiate it all the way back, but  
14 at least that would have put the issue in context. And I would  
15 have been aware of that and not wait until the day of trial on  
16 this. Although I suspected I was going to get something like this.

17 MR. SCHMIDT: Your Honor, may I just say one factual  
18 point?

19 JUDGE SIPPEL: Sure. Please.

20 MR. SCHMIDT: We do intend to focus on the state of  
21 facts, as they just stated. At the time of the tiering decision.

22 JUDGE SIPPEL: Yes.

23 MR. SCHMIDT: But it is our view, exactly as Your Honor  
24 stated, that later evidence can be relevant. It can be relevant to  
25 damages, it can be relevant to the state of our network and our

1 continued decision making regarding our network.

2 We do take issue with the statement that we didn't plead  
3 this in our complaint. The essence of a claim that a tiering was  
4 improper when that tiering continues is that the whole time you're  
5 being tiered is improper. And there's language throughout our  
6 complaint that speaks to that. The heading for our argument on  
7 "similarly situated" is GSN "is and was similarly situated." They  
8 knew that.

9 This didn't come up for the first time in their  
10 opposition. In their motion on this issue they raised this issue.  
11 They criticized us for not being explicit on it, but in their  
12 motion at page 5 they talked about us pleading an "ongoing  
13 violation of Section 616." They accused us of not stating it in  
14 our complaint, but we do have it in our complaint.

15 In terms of discovery, that's why we had further  
16 discovery. We both made objections and then we worked out a  
17 reciprocal agreement on time period that covers exactly the  
18 evidence we seek to introduce. That evidence isn't going to be our  
19 focus. Our focus is going to be what led up to the tiering  
20 decision in 2011 and then what happened immediately after that, and  
21 around that time in terms of us trying to fix it, and them  
22 committing an additional act of discrimination.

23 But it is relevant what happened in the broader window.  
24 It is relevant that when they do something wrong they don't fix it,  
25 that when they get evidence that they've done something wrong that



1 they don't fix it, that the facts that they say matter to them in  
2 the courtroom don't matter to them in their business practice.  
3 That is relevant and it goes to the weight. Your Honor will be  
4 able to consider it for the weight, but it's relevant.

5 JUDGE SIPPEL: Well, did you expect, would you expect them  
6 after you filed -- after February 2011, they looked at your  
7 complaint and they said, boy, they think we did this, this, this,  
8 this, this bad stuff, maybe we better change things just in case  
9 they're right?

10 MR. SCHMIDT: We'd hope --

11 JUDGE SIPPEL: You don't expect them to change their  
12 business?

13 MR. SCHMIDT: We'd hope they would do that. We'd hope  
14 they would say --

15 JUDGE SIPPEL: Really?

16 MR. SCHMIDT: That is the focus of our complaint.

17 JUDGE SIPPEL: Where has that ever happened before in two  
18 businesses?

19 MR. SCHMIDT: It usually happens post-judgment, not pre-  
20 judgment. But that's the purpose of our, of our complaint --

21 JUDGE SIPPEL: Yes.

22 MR. SCHMIDT: -- is we would hope they would see these  
23 people have a claim, that we have violated the law, we should  
24 comply with the law. If we didn't believe that we wouldn't file  
25 our complaint. Our complaint is predicated on our view that they

1 violated Section 616. Did we expect them in the real world to say,  
2 you know what, you're right, you got us, we're going to fix it?  
3 No.

4 But they did know when they saw our complaint that we  
5 were not upset about February 1, 2011, but A-Okay with being tiered  
6 on March 1, 2011 or April 1, 2011 or March 15, 2012. They knew  
7 full well that our, that our complaint was: being tiered is  
8 discriminatory. That's why evidence from the tiering period is  
9 relevant. It's not just relevant to damages. It's not a one-way  
10 standard. It's relevant to damages, it's relevant to understanding  
11 what their decision was.

12 JUDGE SIPPEL: Well, I mean you were, because you raised  
13 this with them, something that was evidence in this, in the  
14 bazillions of documents we reviewed, indicating that this is, in  
15 your collective minds early on, before 2011 anyway. Let me give  
16 you a date. Maybe, maybe it was a year ahead, year before that.  
17 That, hey, we've got to be, we've got to be, we've got to be  
18 attendant to this issue of being pushed up. Am I saying that the  
19 right way? I'm probably not.

20 MR. SCHMIDT: No. What happened was in the summer of 2010  
21 --

22 JUDGE SIPPEL: Yes.

23 MR. SCHMIDT: -- they started looking at this question  
24 internally. Cablevision did.

25 JUDGE SIPPEL: And you didn't know that?

1 MR. SCHMIDT: We didn't know that. The first time we knew  
2 that was in November 2010 when it was like the lightning bolt out  
3 of the blue. We got the call and sorry, you're going to go up to  
4 the sport tier. And we said, wait a second, that makes no sense.

5 JUDGE SIPPEL: All right. That was 2010.

6 MR. SCHMIDT: That was the end of 2010. And then there  
7 was a couple-month interval between November 2010 when they said  
8 we're going to do this, and February 2011 when they did it where we  
9 tried to talk to them about it.

10 JUDGE SIPPEL: Okay. Any more you have to say?

11 MR. COHEN: One thing Mr. Schmidt did not admit, did not  
12 address and it should count for something, is when they sign  
13 interrogatory answers that say that matters after, in 2012 and  
14 2013, had no bearing on the factual and legal issues in this case,  
15 that should mean something, Your Honor. That really should mean  
16 something. And it's here.

17 And I'll be happy to hand it to Your Honor, but I don't  
18 think Mr. Schmidt is disputing that that was the nature of their  
19 objection. The only other thing I wanted to add for Your Honor is  
20 you asked about the HDO.

21 JUDGE SIPPEL: Yes.

22 MR. COHEN: Footnote 5 of the HDO on the statute of  
23 limitations says, "the following matters are not designated for the  
24 ALJ to resolve." And the second, (ii) is whether GSN's complaint  
25 was filed in accordance with the program carriage statute of

1 limitations. So that's --

2 JUDGE SIPPEL: What does it say?

3 MR. COHEN: It says that the issue of the statute of  
4 limitations, Your Honor, in footnote 5, the issue of the statute of  
5 limitations has not been designated for, to the ALJ to resolve.  
6 And we have been operating on that premise. So I don't think  
7 either one of us is intending to introduce evidence with respect to  
8 that issue.

9 MR. SCHMIDT: I don't have the HDO in front of me, Your  
10 Honor. We're trying to get it. My understanding is there's  
11 language in the HDO that says as a threshold matter we reject  
12 Cablevision's contention that GSN's complaint is foreclosed as  
13 untimely under the program carriage statute.

14 JUDGE SIPPEL: You want to borrow on my copy?

15 MR. SCHMIDT: Yes.

16 JUDGE SIPPEL: You want to go on my copy? I've been  
17 reading it to myself.

18 MR. SCHMIDT: Well, Your Honor, the language -- if I may  
19 approach?

20 JUDGE SIPPEL: Yes.

21 MR. SCHMIDT: It's paragraph 12, the very sentence. "As  
22 a threshold matter we reject Cablevision's contention that GSN's  
23 complaint is foreclosed as untimely under the program carriage  
24 statute of limitations." So that's not an issue. It's been  
25 rejected.

1 MR. COHEN: Well, Your Honor, it hasn't been rejected. If  
2 I may, in footnote 71, which is the end of that sentence, it says,  
3 "To the extent Cablevision seeks Commission review of our decision  
4 on this issue, such issue shall be deferred until exceptions to the  
5 initial decision in this proceeding are filed."

6 So as a practical matter I think we're both agreeing  
7 there's no evidence to be presented in this proceeding on the  
8 statute. But, again, I want to make quite clear that we're not  
9 waiving and we're preserving and we'll eventually, if need be,  
10 pursue our statute of limitations defense.

11 MR. SCHMIDT: We're not making a waiver argument. And we  
12 agree that it's not, it's not part of this hearing.

13 JUDGE SIPPEL: Okay. This, okay, I know I see footnote  
14 71. That's, that's not a troublesome for me. And this is not,  
15 this is not an Enforcement Bureau HDO, this is a Media Bureau HDO.  
16 And I'm going to ask, I'm going to ask Ms. Kane, would you -- well,  
17 does that, does that footnote 71 preclude me from ruling on the  
18 statute of limitations question --

19 MS. KANE: Your Honor --

20 JUDGE SIPPEL: -- as a matter of law? It says "the  
21 timeliness of GSN's complaint is not an issue designated for  
22 resolution." Well, that's true. But there are issued not  
23 designated for resolution that I've made sub-fact issues and  
24 whatnot that I get to rule on without any objections from the  
25 Bureau.

1 MS. KANE: Your Honor, with all due respect, we don't have  
2 a copy of the HDO. It wasn't part of all of these exhibits, so we  
3 don't have a copy with us right here. I'd be happy to take a look  
4 at that and assess it. But right now I'm only hearing this issue  
5 for the first time, so.

6 JUDGE SIPPEL: Well, would you -- okay, well take a look  
7 at it and report back to me as soon as, well, as soon as you find  
8 it, as soon as you have a chance to read it.

9 MS. KANE: I'll do so, Your Honor.

10 JUDGE SIPPEL: I'm bothered by that. I don't -- If I have  
11 a clear issue before me and I have the capability of resolving, who  
12 is the Media Bureau to tell me that I can't do it? I mean it  
13 doesn't make a bit of sense to me. I think the Commission would  
14 like me to do it. It makes their job a little bit easier maybe.  
15 I mean why would the Commission -- why are they protecting the  
16 Commission from me? I don't bite or anything like that.

17 You know, it's not a big, it's not a big issue. It's a  
18 very important issue, but it's one that I can handle. Okay,  
19 enough. Let me know what your thoughts are on that.

20 MS. KANE: I will, Your Honor.

21 JUDGE SIPPEL: All right, I'm going to reserve on that  
22 right now. But let's go to the second bunch of documents, let's go  
23 to the B documents.

24 MR. COHEN: So the B documents, Your Honor, since I guess  
25 Mr. Schmidt introduced my objection, I'll introduce his. The

1 second group of documents are a group of documents from advertising  
2 materials of DISH and Direct. So DISH TV and Direct TV are the two  
3 bit satellite providers. They actually sell advertising time,  
4 right. And --

5 JUDGE SIPPEL: Would you read that once more?

6 MR. COHEN: Yes, of course. So DISH and Direct, right,  
7 they're satellite providers, like cable operators.

8 JUDGE SIPPEL: All right.

9 MR. COHEN: Right. And under the standard kinds of  
10 contractual arrangements between satellite operators or cable  
11 operators and networks, the networks give a certain amount of time  
12 back to the operator to sell the advertising themselves. So  
13 usually it's two minutes an hour.

14 So when you're watching GSN, most of the commercials that  
15 you're seeing on GSN are sold by GSN, but a small percentage of  
16 those commercials are actually sold by the local cable operator, or  
17 by the satellite operators as part of a contractual arrangement.

18 JUDGE SIPPEL: Direct TV?

19 MR. COHEN: Pardon, Your Honor?

20 JUDGE SIPPEL: Direct TV or?

21 MR. COHEN: Direct TV, yes. So Direct TV, let's just use  
22 Direct TV as the one example. So Direct TV sells advertising on  
23 cable networks. And GSN in fact is a buyer of that advertising.  
24 And when it wants to advertise its shows on other networks it buys  
25 advertising from Direct TV. Of course Direct TV is one of its

1 parents --

2 JUDGE SIPPEL: Yes.

3 MR. COHEN: -- but let's leave that to one side.

4 JUDGE SIPPEL: Yes.

5 MR. COHEN: All right. Direct TV --

6 JUDGE SIPPEL: That's Hannah and her Horse? Hannah and  
7 Her Horse?

8 MR. SCHMIDT: That is the advertising campaign, Your  
9 Honor.

10 MR. COHEN: Yes, yes. That's Direct TV.

11 MR. SCHMIDT: That's not ours.

12 MR. COHEN: I'm a cable subscriber, Your Honor. I live in  
13 the city. You can't get satellite. You can get satellite but my  
14 building won't allow it.

15 JUDGE SIPPEL: Get out and get some fresh air.

16 MR. COHEN: They won't allow it. I'm trying, Your Honor.  
17 All right, and so --

18 JUDGE SIPPEL: Inside joke.

19 MR. COHEN: So the document, the documents that they send  
20 --

21 JUDGE SIPPEL: Yes.

22 MR. COHEN: -- to prospective advertisers say you don't  
23 have to buy the advertising from us, Direct TV, network by network.  
24 You can buy them in clusters, groups of networks. And we will  
25 group together networks that are similarly situated, all right.



1 And I don't mean that to have legal implications.

2 But and so they have adult clusters. They have male  
3 clusters. They have female clusters. They say, if you want to buy  
4 women's networks as a group you can do that. And in fact GSN  
5 bought advertising on all of those clusters.

6 The point of this evidence, Your Honor, is that neither  
7 Direct TV nor DISH Network include GSN in those women's clusters.  
8 So if you go to Direct TV -- there's going to be a lot of testimony  
9 in this case about their perception of advertisers. They have an  
10 expert who is going to testify about it. They're putting in their  
11 head of advertising. The perception -- and I can give it to Your  
12 Honor if you'd like to see it, it's Exhibit 212. You may have it  
13 behind you, Your Honor. If that's easier, 212, Cablevision 212.  
14 It's a lot of books.

15 JUDGE SIPPEL: This is not --

16 MR. COHEN: Your Honor, it may just be easier.

17 JUDGE SIPPEL: Oh, yes.

18 MR. COHEN: They'll hand it to me, I'll hand it to you.

19 And it's the --

20 JUDGE SIPPEL: Oh, I remember seeing this.

21 MR. COHEN: Yes, it's four pages in. And it says, "The  
22 best programming targeted clusters." So if you turn to that page  
23 that says "the best programming," it's on the right side.

24 JUDGE SIPPEL: Give me a page number.

25 MR. COHEN: The page is 5 of 18.

1 JUDGE SIPPEL: I've got it. I've got it.

2 MR. COHEN: All right. And there's a female cluster,  
3 which has WE. And there's an adult cluster up at top which has  
4 GSN. And the point that we're making, Your Honor, that we're  
5 trying to make with this evidence, is if we're talking about  
6 perceptions of advertisers and what the public thinks about whether  
7 these, that these networks are similarly situated, this is clearly  
8 relevant evidence.

9 Now, the argument that's being made about foundation, of  
10 course, is, first of all an argument that's not in the rules of  
11 evidence, I mean there's no foundation argument in the rules of  
12 evidence. The fact of the matter is that Mr. Chang testified about  
13 this at his deposition. He said that they sell advertising in this  
14 way. Mr. Change was a programming executive at Direct TV who sat  
15 on the management board of GSN. Ms. Hopkins testified that while  
16 she hadn't --

17 JUDGE SIPPEL: Dale? Dale Hopkins?

18 MR. COHEN: Yes. While she had not seen this specific  
19 document she'd seen documents like it. We have other internal  
20 documents of GSN, which I am happy to show Ms. Hopkins on cross-  
21 examination if need be, which show that not only did they  
22 understand how these clusters work, but they bought on these  
23 clusters. And the networks on each of these clusters were in fact  
24 known to GSN.

25 So, Your Honor, the argument we want to make is, one,

1 it's the perception of advertisers; two, if they really thought  
2 that they were a women's network why wouldn't they be complaining  
3 about this? And there's more than an adequate foundation, Your  
4 Honor. I mean we have just let in hearsay after hearsay after  
5 hearsay by agreement. This is not a hearsay objection.

6 So I think between the testimony of Mr. Chang, the  
7 testimony of Ms. Hopkins, the way it relates to documents and, Your  
8 Honor, given that we're in an administrative proceeding where, as  
9 we've been reminded many times by our friends on the other side,  
10 that we're not being hyper-technical about the admission of  
11 evidence, there's nothing unreliable about this evidence. You can  
12 pick it off the web today.

13 I mean there's no dispute that this is what the documents  
14 say. It's true, it's true that we do not have a Direct TV or a  
15 DISH witness but, you know, the fact, the fact of the matter is  
16 their own witnesses will testify that they're familiar with it.  
17 And, in fact, we learned about these documents during the  
18 deposition of Mr. Chang and we've designated that testimony. So  
19 foundation, if anything, it goes to the weight, Your Honor. But --

20 JUDGE SIPPEL: This is not -- this is your document, this  
21 is not taken from a -- this is not a discovered document from --

22 MR. COHEN: This is a document that's been taken from the  
23 website.

24 JUDGE SIPPEL: Right. Website, okay.

25 MR. COHEN: Right?

1 JUDGE SIPPEL: Where do you find, where do you find GSN  
2 under adults? I'm having trouble seeing it. Oh, I see it now.

3 MR. COHEN: It's a little hard to read, Your Honor.

4 JUDGE SIPPEL: I see it now.

5 MR. COHEN: Right.

6 JUDGE SIPPEL: I got you.

7 MR. COHEN: It's a little chiclet between Clue and ID.

8 JUDGE SIPPEL: I got it.

9 MR. COHEN: It's a little hard.

10 JUDGE SIPPEL: I got it. Okay.

11 MR. COHEN: So but the point really is it's not on the  
12 women's cluster.

13 JUDGE SIPPEL: Right.

14 MR. COHEN: So, Your Honor, it's clearly relevant. And  
15 they can argue whatever they want about the weight. And Ms.  
16 Hopkins' responsibilities when she --

17 JUDGE SIPPEL: Okay, so where are we going with all this  
18 now?

19 MR. COHEN: I'm asking for a ruling because I would like  
20 to open on this document, among other things.

21 JUDGE SIPPEL: And you feel that this, what are you saying  
22 should be done with this document?

23 MR. COHEN: It should be admitted into evidence.

24 JUDGE SIPPEL: All right. And there's an objection to  
25 that?

1 MR. COHEN: Yes, Your Honor.

2 JUDGE SIPPEL: And you can't, you can't resolve it?

3 MR. COHEN: This is the last -- other than the post-  
4 tiering documents, there are three or four documents like this,  
5 this is the last unresolved. Am I right, Mr. Schmidt?

6 MR. SCHMIDT: We have objections to the video, but I don't  
7 think --

8 MR. COHEN: Yes, video message, yes, video evidence, yes.

9 JUDGE SIPPEL: Wait a minute. And the date of this is  
10 2013 Media Kit.

11 MR. SCHMIDT: Your Honor just made my argument.

12 JUDGE SIPPEL: 2013.

13 MR. SCHMIDT: 2013.

14 MR. COHEN: Well, I'll establish through cross that it was  
15 exactly the same in 2009 and 2010 and 2011.

16 MR. SCHMIDT: 2013, 2012, 2014. I think the best way to  
17 resolve this, Your Honor, is the way you're addressing the post-  
18 tiering issue. Hear it as it comes in. We'll make our objections.  
19 Your Honor can give it the weight it deserves.

20 JUDGE SIPPEL: Well, you know, the thing is that if you  
21 had given, if you had given a free ride to GSN on their problem I  
22 would have been more inclined to go along with this. But at least  
23 I've got to give you equal treatment. So I'm going to reserve on  
24 this one.

25 MR. COHEN: Okay.

1 JUDGE SIPPEL: This whole line of questioning. Everything  
2 is -- we haven't wasted time, believe me.

3 MR. COHEN: Okay.

4 JUDGE SIPPEL: And we're going to, we're going to come up  
5 with a ruling as, and it will be as, you know, as reasonably  
6 quickly as I can.

7 MR. COHEN: Your Honor, if I may suggest, I'll deal with  
8 it in Ms. Hopkins' cross and then that might be the appropriate  
9 time.

10 JUDGE SIPPEL: Okay. It's up to you all. I still going  
11 to try and resolve yours as soon as I can.

12 MR. SCHMIDT: Okay. Thank you, Your Honor.

13 JUDGE SIPPEL: So where do we go now? Are we going to  
14 opening statements?

15 MR. SCHMIDT: We're ready to open, Your Honor.

16 JUDGE SIPPEL: Yes. Let's go off the record for just a  
17 minute.

18 (Whereupon, the above-entitled matter went off the record  
19 at 10:55 a.m. and resumed at 10:59 a.m.)

20 MR. SCHMIDT: With Your Honor's leave, I think this is  
21 from both sides, could we use a couple of poster boards? And then  
22 what we were planning to do was give Your Honor a binder of  
23 documents that would help through the opening.

24 JUDGE SIPPEL: Do you know about this?

25 MR. COHEN: Yes, Your Honor.

1 JUDGE SIPPEL: Okay. No objection?

2 MR. COHEN: No objection, Your Honor.

3 JUDGE SIPPEL: Okay, let's do it. Let's go.

4 And I am inclined to go right straight through.

5 MR. COHEN: As long as we can take five minutes, Your  
6 Honor.

7 JUDGE SIPPEL: Oh, yes, you can take ten minutes. I'm  
8 not talking about --

9 MR. SCHMIDT: May I approach, Your Honor?

10 JUDGE SIPPEL: Yes, please do. We have absolutely no  
11 liability in here.

12 MR. SCHMIDT: Your Honor, thank you for bearing with us.  
13 Consistent with what we did before, if it is okay with Your Honor,  
14 I might stand up to use the posters.

15 JUDGE SIPPEL: You can do it any way you want to.

16 MR. SCHMIDT: Okay.

17 JUDGE SIPPEL: As long as I am understanding what is  
18 going on.

19 MR. SCHMIDT: Let me just give an introduction and then  
20 start walking through the documents.

21 JUDGE SIPPEL: Yes, sir.

22 MR. SCHMIDT: For 14 years, Cablevision did what everyone  
23 else in the marketplace did. It recognized the value of GSN and  
24 granted it broad carriage, consistent with that value.

25 In 2011, Cablevision did something that the rest of the

1 marketplace did not do. It put GSN up on a sports tier,  
2 inconsistent with how it was treating its similarly situated  
3 networks, WE tv and Wedding Central, which continued to gain broad  
4 carriage from Cablevision. For GSN, that was a huge deal, putting  
5 GSN on the sports tier, depriving it of access to Cablevision's  
6 customers, putting it with the tiers of channels it has no place  
7 being with, in terms of male-oriented sports channels was the  
8 equivalent of sending it to Siberia.

9 That is what this case is about. That conduct, treating  
10 GSN poorly because Cablevision does not own it; treating WE tv and  
11 Wedding Central favorably because it does own them, that is the  
12 heart of what Section 616 prohibits.

13 JUDGE SIPPEL: You know, I wanted to ask a question here.  
14 Why is it that you -- what do you think? Why is it that outfits  
15 like Cablevision have these tiers of no return? They have four or  
16 five tiers up, or three, four, or five up from a regular tier and  
17 nobody looks at the programming except people with particular  
18 interest. What do they have that thing for? Do they make money on  
19 it?

20 MR. SCHMIDT: They make money on it and they make -- yes,  
21 they make money on it. And the idea of a tier like a sports tier  
22 is exactly what it sounds like. They have regular sports channels  
23 as part of their broader basic tier like ESPN and like the network  
24 channels. But their view is if they create a sports tier,  
25 specialized in sports programming that isn't covered by the



1 existing sports channels, they will get additional viewers to pay  
2 extra money for that sports channel or a subset of their viewers to  
3 pay extra money for that sports tier.

4 JUDGE SIPPEL: So the viewers are going to be already  
5 doing something -- they have already got a viewing tier down below,  
6 the general viewing.

7 MR. SCHMIDT: Yes.

8 JUDGE SIPPEL: And they have got this one, too. You  
9 can't just go and buy a ticket to the -- buy a subscription to the  
10 high tier.

11 MR. SCHMIDT: I'm not sure how Cablevision does them.  
12 Some will sell tiers individually. I think it is an add-on. My  
13 understanding is that it is an add-on to their basic tier. That  
14 you have got to get the basic tier and then you pay extra and you  
15 get the sports tier but it speaks to the nonsensical nature of what  
16 happened here.

17 Game Show Network is not a sports network and we will see  
18 that in the documents, where they kind of do the sleight of hand  
19 where when they put Game Show Network up there, they renamed the  
20 tier and they get worried about getting caught for renaming the  
21 tier because it doesn't -- GSN doesn't really belong there. It is  
22 not a sports channel.

23 JUDGE SIPPEL: Who is going to catch them?

24 MR. SCHMIDT: They get worried in some of their documents  
25 that the public is going to say this doesn't look right. Why is

1 GSN up on a sports tier? And in fact, those are some of the  
2 complaints they get from their customers.

3 JUDGE SIPPEL: Okay. Is that true, Mr. Cohen, you have  
4 to belong to some lower tier before you can get up there?

5 MR. COHEN: It is an add-on, sir. Yes, Your Honor.

6 JUDGE SIPPEL: So, it is kind of like a privilege, like  
7 a fancy club or something.

8 MR. COHEN: It is a choice.

9 MR. SCHMIDT: A choice for the customers. It is a  
10 punishment for us because for us, we don't get access to the same  
11 breadth of customers.

12 JUDGE SIPPEL: Go ahead, I'm sorry.

13 MR. SCHMIDT: That's the problem.

14 JUDGE SIPPEL: We understand that.

15 MR. SCHMIDT: Section 616 makes a very simple rule. It  
16 says if a company like Cablevision is going to own channels, it  
17 can't either discriminate in their favor or against the similarly  
18 situated channels that it doesn't own. Its distribution side, the  
19 cable side, has to make decisions based on merit, not based on  
20 affiliation in favor of the programming side or against the  
21 programming channels that they don't own. And we are here because  
22 Cablevision didn't follow that rule. It didn't apply the same  
23 standards to the channels that owned versus the channel GSN that it  
24 doesn't own.

25 Specifically, we are going to focus on two core acts of

1 discrimination. The first is what we have been talking about in  
2 the pre-hearing argument, the decision to tier the network that was  
3 announced in November 2010 and execute it on GSN in February of  
4 2011. And as I said, that continues to this day. GSN, to this  
5 day, remains on the sports tier with Cablevision, even as WE tv  
6 enjoys very broad carriage at the basic tier from Cablevision.  
7 That differential treatment continues to this day.

8           Wedding Central has folded. It was a non-viable channel  
9 but until the day it folded, Cablevision continued to grant Wedding  
10 Central favorable broad carriage.

11           That is the first act of discrimination. The second act  
12 of discrimination is even more explicit.

13           The second act of discrimination is that once they told  
14 us they were putting us on the sports tier, we said wait a second,  
15 this doesn't make sense. Can we figure something out here? How  
16 can we get the fair carriage we think we are entitled to? And  
17 their response on the distribution side, on the cable side, was to  
18 say well, let's see what our programming people want. Let's see  
19 what our channels want. Let's see if we can help out our channels.  
20 And they came back to GSN and said if your parent, DIRECTV gives  
21 broad carriage to Wedding Central, our channel, then we will put  
22 you back.

23           That was the second act of discrimination, saying that  
24 the only way GSN could get fair carriage was if it got its parent  
25 company, DIRECTV, to grant favorable carriage to Cablevision's

1 channel, Wedding Central. That is the distribution side of  
2 Cablevision, making a decision based on the programming side of  
3 Cablevision. That is the second even more explicit act of  
4 discrimination and those are the acts I would like to focus on in  
5 my opening.

6 And I thought it would make sense to start off just with  
7 a time line, Your Honor, just to kind of orient some of the events  
8 in this case. And it is the first tab, Your Honor has in your  
9 binder.

10 JUDGE SIPPEL: This is a public document?

11 MR. SCHMIDT: Yes, it is the same as our poster.

12 JUDGE SIPPEL: So, we can put this in a public record?

13 MR. SCHMIDT: Yes. And what we are intending to do with  
14 the binder, because that is not true of the full binder, I don't  
15 think that is true of Mr. Cohen's full binder, is there will be  
16 items in the binder, many, many items that are not part of the  
17 public record. We are thinking, giving you the binder, you would  
18 be able to see what the documents say but we could speak about them  
19 in opening in a manner that is fine for the public record.

20 JUDGE SIPPEL: Fine, okay. So, slow down. The items  
21 that you are showing me here that are for the public, they can go  
22 into public record.

23 MR. SCHMIDT: The binder is not public record.  
24 Everything we say is public record and everything we put up on a  
25 board is public record.

1 JUDGE SIPPEL: So, you want this protected.

2 MR. SCHMIDT: Yes, please.

3 JUDGE SIPPEL: Thank you. Okay, it will be protected.

4 MR. SCHMIDT: Thank you, Your Honor.

5 JUDGE SIPPEL: Unless I get a motion to unprotect it,  
6 then we will see what happens. Go ahead.

7 MR. SCHMIDT: So, if we start off in 1997, GSN had been  
8 in existence for a few years at that point in time. It was  
9 launched in 1994. In 1997, Cablevision made an agreement with GSN  
10 to carry it on a broad tier of penetration on the basic tier.

11 JUDGE SIPPEL: Was that when Mr. Goldhill came up?

12 MR. SCHMIDT: Mr. Goldhill came up ten years later in  
13 2007.

14 JUDGE SIPPEL: In 2007, okay.

15 MR. SCHMIDT: Also, in 1997, WE tv launched. WE tv  
16 became a channel and very quickly Cablevision gave WE tv very  
17 favorable carriage.

18 That continued for a number of years until 2005, when  
19 GSN's contract with Cablevision expired and Cablevision refused to  
20 negotiate a new contract. They just said we are going to keep you  
21 here. We are not going to pay you more. We are not going to give  
22 you a new contract.

23 In 2009 --

24 JUDGE SIPPEL: What reason did they give you for that?

25 MR. SCHMIDT: Essentially, we don't have to.

1 JUDGE SIPPEL: They said we don't have to?

2 MR. SCHMIDT: Yes. Which is the nature -- the point of  
3 view of a network like GSN of dealing with a very large cable  
4 company like Cablevision. You have got to live with the things  
5 they tell you. We are not going to talk about this.

6 JUDGE SIPPEL: All right.

7 MR. SCHMIDT: August of 2009, the second Cablevision  
8 channel, the first is WE tv, the second Cablevision channel,  
9 Wedding Central, launches. And immediately, right from the  
10 beginning, Cablevision gives Wedding Central extremely broad  
11 carriage in the marketplace.

12 If I could show Your Honor tab 2 of the binder, it is a  
13 very important chart. This is the carriage that Cablevision  
14 granted to Wedding Central in the marketplace. [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
19 And I want to pause on this for a minute because I think  
20 there is a very important takeaway from this slide. Your Honor  
21 will recall that before the hearing in this matter, Cablevision  
22 filed a motion for summary disposition arguing that GSN had not  
23 been harmed as a matter of law by their conduct. And the essence  
24 of that argument was we are too small to discriminate. We are too  
25 small to cause harm. They didn't challenge our showing of

1 discrimination because there are a lot of facts showing  
2 discrimination but they did challenge our ability to prove harm,  
3 essentially with the argument that they are too small to cause  
4 harm. This chart proves just the opposite. This chart proves that  
5 in their business dealings, not their court arguments but in their  
6 business dealings, they believed they had the power to shape the  
7 marketplace. That was their model for Wedding Central.

8 Their model for Wedding Central was if they launched it  
9 and they get a discriminatory carriage that no one else was willing  
10 to give it, that eventually the rest of the marketplace would catch  
11 up and Wedding Central would survive. If Cablevision believes that  
12 they can shape the marketplace by discriminating in favor of their  
13 channel, of course they know that they can hurt a competitor by  
14 discriminating against them. That is their business is taking  
15 special steps to help themselves because they know that works.  
16 They know they have the power to make that work.

17 JUDGE SIPPEL: And they are effectively saying -- I am  
18 looking at this, basically, as New York City. I mean I don't know  
19 what market you want to try this case under, both national and  
20 local percentage but this is definitely a New York City market.

21 MR. SCHMIDT: We think it is a New York City market but  
22 this data we are looking at --

23 JUDGE SIPPEL: What do you say? Do you say it is a New  
24 York City market or not?'

25 MR. COHEN: No, Your Honor.

1 JUDGE SIPPEL: [REDACTED].

2 MR. COHEN: If you are asking me was Cablevision in the  
3 New York market alone, for the purpose of this case, the answer is  
4 yes. Do I think that is the test for unreasonable restraint, I  
5 don't. I don't want to interrupt Mr. Schmidt.

6 JUDGE SIPPEL: We'll get back to that.

7 MR. SCHMIDT: If we go to slide 3 in your binder --

8 JUDGE SIPPEL: But I want to get back to your statement.

9 MR. SCHMIDT: Yes.

10 JUDGE SIPPEL: You are saying that Cablevision is saying  
11 to the public take it or leave it because we are the only player on  
12 the block that is in this, what do they call it, a cluster. Do you  
13 see the cluster thing?

14 MR. SCHMIDT: They are saying they know they can give  
15 themselves special carriage --

16 JUDGE SIPPEL: Yes.

17 MR. SCHMIDT: -- in their market in New York.

18 JUDGE SIPPEL: Right.

19 MR. SCHMIDT: But it is actually more than that. They  
20 believe that their ability to give them special carriage -- they  
21 didn't launch Wedding Central just so it would be a New York  
22 channel. They launched it so it would be nationally successful.  
23 They believe that their ability to do things on the basis of  
24 discrimination in New York will resonate out nationally. That is  
25 what this chart shows. They think that if they can help themselves



1 enough in New York that will make a difference nationwide.

2 JUDGE SIPPEL: I hear you. Go ahead.

3 MR. SCHMIDT: Tab 3 is the flip side of that. Tab 3 is  
4 how they were out of step with the marketplace in their treatment  
5 of GSN post-tier. The same idea. Just in the same way they  
6 believe that this is a matter they can help themselves by  
7 discriminating on the basis of an affiliation. They know as a  
8 business matter they can hurt a competitor by [REDACTED]

11 Tab 4 in Your Honor's binder.

12 JUDGE SIPPEL: Slow down a minute. It seems to me that  
13 Cablevision is over here with [REDACTED]. What is  
14 the programming that they are -- is that -- what programming do  
15 these numbers apply to, the percentage?

20 JUDGE SIPPEL: It got you.

21 MR. SCHMIDT: And then the next chart, at tab 4, brings  
22 that point home.

23 JUDGE SIPPEL: And the next tab brings that point home.

24 MR. SCHMIDT: Tab 4 is, essentially, these two earlier  
25 tabs combined.

1 JUDGE SIPPEL: I've got you.

2 MR. SCHMIDT: So, the red lines is how Cablevision and  
3 other people carry Wedding Central and you see the high level of  
4 carriage by Cablevision for the channels they own, unmatched  
5 anywhere in the marketplace. The blue line is how Cablevision and  
6 other channels carry GSN. You see the low level of carriage of GSN  
7 by Cablevision, unmatched by what anyone else in the marketplace  
8 looks like.

9 JUDGE SIPPEL: Right.

10 MR. SCHMIDT: Your Honor wanted a picture of  
11 discrimination. This is what discrimination looks like, carrying  
12 the nonaffiliated channel at the dramatically lower rate than the  
13 marketplace, carrying the affiliated channel at a dramatically  
14 elevated rate over the marketplace. That is the picture of  
15 discrimination.

16 JUDGE SIPPEL: And they accomplished this by what? By  
17 throwing GSN up on this sports tier.

18 MR. SCHMIDT: Sports tier, yes. And by saying when we do  
19 deals with ourselves, where our programming people who deals with  
20 our distribution side, we are going to give them better deals on  
21 the distribution side than they can get from anyplace else in the  
22 marketplace. And I will spend some time talking about some aspects  
23 of how they do that.

24 Tab 5, there is some testimony that is only coming in by  
25 deposition. This is an example of that. This is testimony from

1 Josh Sapan who is not going to be appearing live. On the  
2 Cablevision side, he is the highest person up on the programming  
3 side. On the channel side, he sits at the top.

4 JUDGE SIPPEL: For Cablevision.

5 MR. SCHMIDT: For Cablevision. We wanted to just flag  
6 some of his testimony, Your Honor. I should say this binder, even  
7 as slender as it is, is just excerpts. You see that with the  
8 testimony, we just jumped right to the page we thought was  
9 important for this point.

10 JUDGE SIPPEL: Right.

11 MR. SCHMIDT: And these are just examples. They are not  
12 intended to be exhaustive. But if Your Honor looks at page 90 of  
13 Mr. Sapan's testimony, we asked him this question about how  
14 Cablevision carried Wedding Central. Did anyone ever come close  
15 the percentage level of carriage, the level of penetration that  
16 Cablevision was offering, to your knowledge? The answer is I don't  
17 believe so. We asked them why. Can you tell me why you got so  
18 much more coverage on Cablevision than any other MVPD? Not  
19 definitively. That is an answer Your Honor is going to hear again  
20 and again for Cablevision witnesses. They get this special  
21 treatment from Cablevision and when you ask them about it, it is  
22 like it just happens by magic. It just occurs. It is a happy  
23 coincidence of ownership. The facts will show differently.

24 If we continue along the time line when we were  
25 discussing things pre-hearing, Your Honor asked the question about

1 what was happening in 2010. And in the summer of 2010, I mentioned  
2 to Your Honor that that is when Cablevision looked at tier GSN.  
3 And I wanted to show Your Honor some testimony on that point, if I  
4 may.

5 That is tab 6 in Your Honor's binder. July of 2010, when  
6 Cablevision first starts to think about tiering GSN. This is  
7 testimony from John Bickham. In many ways, he is the counterpart  
8 for Josh Sapan. John Bickham is the highest person on the  
9 distribution side for Cablevision on the cable side and he is not  
10 going to appear in this hearing. He is not being called by  
11 Cablevision in this hearing. But the distribution witness from  
12 Cablevision reports up to him. Tom Montemagno reported up to John  
13 Bickham and Mr. Montemagno was very clear Mr. Bickham was the  
14 decision-maker as to the decision to tier GSN.

15 JUDGE SIPPEL: Now Mr. Bickham is going to testify?

16 MR. SCHMIDT: He is not testifying. The only thing we  
17 have is the deposition that we took of Mr. Bickham and that is why  
18 I wanted to flag some of what he said in that point.

19 JUDGE SIPPEL: Will you call him as an adverse witness?

20 MR. SCHMIDT: I suppose we could have looked at doing  
21 that. We didn't. We were happy with what he said in his  
22 deposition. It seemed to answer the questions.

23 JUDGE SIPPEL: Is there going to be an objection to that  
24 deposition?

25 MR. COHEN: No, Your Honor. But I would just point out

1 Mr. Bickham doesn't work for Cablevision. He hasn't for some time.

2 JUDGE SIPPEL: He retired?

3 MR. COHEN: He is at Charter, Your Honor.

4 JUDGE SIPPEL: At Charter.

5 MR. COHEN: Yes.

6 JUDGE SIPPEL: All right.

7 MR. SCHMIDT: So, if we look at Mr. Bickham's testimony,  
8 if Your Honor looks at page 60 in tab 6, he explains at line 11.  
9 There is two highlights here. If Your Honor could actually look at  
10 the second highlight at line 11, that is his explanation for why  
11 GSN was tiered. It does not have must have programming and,  
12 intuitively, I knew that we could drop the programming without  
13 losing customers and that it would not affect our ability to gain  
14 customers and connect customers. That is his rationale, not must  
15 have programming.

16 And I want to focus, Your Honor, on that word he uses.  
17 It says intuition that it is not must have programming.

18 The next page we have put in Your Honor's binder at page  
19 76 --

20 JUDGE SIPPEL: Is this in the same tab?

21 MR. SCHMIDT: Same tab, yes, Your Honor. The very next  
22 page.

23 JUDGE SIPPEL: Okay.

24 MR. SCHMIDT: Mr. Bickham explains how he reached that  
25 intuition. I think I said previously that periodically I would go

1 through the grid guide and look at the information about the  
2 programming on GSN and I periodically would go to that channel and  
3 see what was being displayed. Could you give us a sense of what  
4 periodically means, if you can recall? Yes, at my home two or  
5 three times a month. And for how long were you watching the  
6 network during these periodic visits? Ten minutes, five minutes.

7 That is the basis for the decision to tier GSN. Mr.  
8 Bickham is sitting at his house a couple of times a month watching  
9 GSN for five minutes. Several things are notable about that.  
10 First, that is not the basis for a legitimate business decision by  
11 a billion dollar corporation, him sitting at home for five minutes  
12 watching the television and making a judgment as to whether in his  
13 intuition it is must have TV.

14 We know that because they don't apply that test to the  
15 channels they own. If Your Honor looks at the next page, the next  
16 excerpt at 107, this is Mr. Bickham admitting Wedding Central --  
17 did you ever watch Wedding Central when it was on? No. This  
18 intuitive test he talks about he doesn't even apply to the channels  
19 they own.

20 Well, do you have a view as to whether Wedding Central  
21 had must have TV? Answer: My sense is no. The test they have, he  
22 admits his channel fails but it doesn't get applied for the  
23 channels Cablevision owns.

24 What about WE tv? Does WE tv have must have programming?  
25 I'm not sure. I'm not sure.

1           That is not a legitimate business justification. And  
2 reflecting that, we believe Cablevision is going to point to an  
3 analysis just a basic basic cost and ratings analysis that Mr.  
4 Montemagno performed for Mr. Bickham.

5           The important thing about that analysis, if Your Honor  
6 will just flip back two pages to page 60, at the very top, did the  
7 carriage assessment that Mr. Montemagno put together for you which  
8 we have marked as Bickham number four, did it impact your thinking  
9 on the GSN carriage question in this July 2010 time period?  
10 Answer: No. He made his judgment on this intuition about whether  
11 it was must have programming. He didn't apply it to the channels  
12 they own. That is why we think we are going to hear from  
13 Montemagno try to say well, it was all about cost. It was all  
14 about ratings. We will show how that is pretextual as well. Mr.  
15 Bickham was clear as to what the basis for his decision was.

16           Later in my argument, I am going to come back to that  
17 basis because the facts, as they developed, actually proved Mr.  
18 Bickham wrong and Cablevision didn't do anything in response to  
19 that. That is the essence of discrimination, having one test for  
20 yourself or no test for yourself because it is automatic that you  
21 are going to get favorable carriage and another test for the  
22 unaffiliated networks and have that test be a pretext.

23           JUDGE SIPPEL: Does Mr. Bickham, does he rely on  
24 Montemagno?

25           MR. SCHMIDT: He relies on him generally. That is why we

1 put in front of him in his testimony the document that Mr.  
2 Montemagno prepared to say did you rely on this document. And he  
3 said no. It didn't impact your thinking at all? Answer: No.

4 And then we said well, explain that to us. And that is  
5 when he gives the answer about look, I was relying on my intuition  
6 that this was no must have TV.

7 JUDGE SIPPEL: Mr. Bickham is showing Mr. Montemagno's  
8 analysis and he said he wasn't relying on it. It was he intuited.

9 MR. SCHMIDT: Yes, Your Honor.

10 JUDGE SIPPEL: Yes, like a relief pitcher.

11 MR. SCHMIDT: That is July of 2010. In November 2010,  
12 Cablevision communicates to GSN that they are going to tier the  
13 network; not can we talk about this, can you give us a better deal.  
14 They communicate that we are going to tier the network.

15 And I want to focus on where GSN stood at that point in  
16 time, the exact question that Mr. Cohen said in pre-hearing  
17 argument that this case is about, where they stood in that November  
18 2010 time period.

19 Tab 7 in Your Honor's binder is a summary of the evidence  
20 just right there, Your Honor.

21 JUDGE SIPPEL: Wait a minute. Sorry, go ahead.

22 MR. SCHMIDT: Tab 7 is a summary of the evidence that we  
23 will submit during the hearing on this question of GSN being  
24 similarly situated with WE tv and with Wedding Central.

25 And Your Honor sees the different metrics that this



1 evidence addresses. Similar audiences in 2010 and 2014, similar  
2 advertisers. The programming is different in terms of what the  
3 programs are but it is similarly themed. They want to make this  
4 case all about the idea that if game shows are different than the  
5 variety of programs that WE tv shows, they can never be similarly  
6 situated.

7 JUDGE SIPPEL: Hold on just a second. The audience in  
8 2010 for Game Show?

9 MR. SCHMIDT: Yes, Your Honor.

10 JUDGE SIPPEL: And it changes from [REDACTED]?

11 MR. SCHMIDT: Yes.

12 JUDGE SIPPEL: Now, of course what Mr. Cohen is saying is  
13 he doesn't want hear about 2014.

14 MR. SCHMIDT: Yes.

15 JUDGE SIPPEL: And could you conceivably, you I mean your  
16 client be subconsciously attempting to shoehorn the programming  
17 more and more into the context of where this case is going, as  
18 opposed to just this is a natural event?

19 MR. SCHMIDT: That is possible. That is not what  
20 happened. If he wants to try to prove that we changed our  
21 programming because of this law suit, have at it. The evidence  
22 won't support that.

23 JUDGE SIPPEL: Well, I am just wondering what can you do  
24 to dissuade me from thinking that?

25 MR. SCHMIDT: What I can do to dissuade you from thinking

1 that is to introduce evidence from our witnesses, starting with our  
2 CEO later today that this has always been a women's network. And  
3 Your Honor asked about when Mr. Goldhill started with GSN and --

4 JUDGE SIPPEL: In 2007.

5 MR. SCHMIDT: 2007. And I think what Your Honor had in  
6 mind was Mr. Goldhill making a point in his direct testimony that  
7 when he started with GSN, he made it a focus to do everything he  
8 could to further increase the female viewership. That was in 2007.  
9 That has just continued. Moving from [REDACTED] you can argue is not  
10 a material difference. Interestingly, moving from [REDACTED] is a  
11 material difference in terms of how WE tv performs.

12 But that is kind of the point about the post-hearing  
13 evidence is that what is happening in 2014 is the same thing that  
14 was happening in 2010 is the same thing that Mr. Goldhill -- it had  
15 been happening before his tenure but he really emphasized when he  
16 came in in 2007.

17 JUDGE SIPPEL: Continue.

18 MR. SCHMIDT: So, what I started to say, Your Honor, is  
19 Cablevision very much wants to take, in our view, a simplistic view  
20 of the similarly situated test. They want to say game shows are  
21 different than the range of programs that WE tv runs; they can't be  
22 similarly situated.

23 That is the essence of one of their expert's testimony,  
24 Mr. Egan, who Your Honor will recall from the Tennis Channel case.  
25 Mr. Egan is someone who Your Honor found not credible in the Tennis

1 Channel case and I believe the full FCC said it was completely  
2 unpersuasive. His view is simply because they are different  
3 genres, they can't be similarly situated. That is the view of  
4 their survey. They actually paid someone \$50,000 to do a survey to  
5 say to a small group of customers, a couple of hundred people, is  
6 game show programming the same kind of program as WE tv. And the  
7 expert says well, my results show it is different.

8 That is not what the analysis is under the law. The  
9 analysis is looking at all of these factors that Your Honor sees at  
10 tab 7. The audience, they are the same, advertisers, striking  
11 overlap in advertisers, programming. Programming has different  
12 elements; it is themed towards the same customers' ratings; the  
13 same or we do better license fees; the same or we are actually a  
14 little less expensive than what they pay themselves. All of those  
15 under the law speak to them being similarly situated and that is  
16 what our evidence is going to focus on the full picture, not simply  
17 this artificial genre analysis.

18 But let me close on this point by talking about  
19 competitive set, which is a term that Your Honor is going to hear  
20 several times. Who do these networks think of as their  
21 competitors? And Your Honor will see documents from GSN, where we  
22 talk about WE tv being one of our competitors; one of our  
23 competitors for advertisers, one of our competitors for viewers.

24 If you look at tab 8 --

25 JUDGE SIPPEL: I'm here. I'm with you.

1 MR. SCHMIDT: -- Your Honor is also going to see  
2 documents from WE tv itself, from Cablevision itself, where they  
3 acknowledge that we are their competitors. This is a slide  
4 presentation that Kim Martin, the president at the time of WE tv,  
5 made internally for the other Cablevision channels. This is WE tv  
6 explaining to the other Cablevision channels this is what WE tv is  
7 all about. This is who we are.

8 JUDGE SIPPEL: Rainbow was a subsidiary of Cablevision,  
9 right?

10 MR. SCHMIDT: Yes.

11 JUDGE SIPPEL: That is their program producer.

12 MR. SCHMIDT: Yes, that is the programming side. WE tv  
13 is part of Rainbow.

14 JUDGE SIPPEL: And when you say the programming side,  
15 that means that they are engaged in the business of creating  
16 programming?

17 MR. SCHMIDT: Yes.

18 JUDGE SIPPEL: And trying to use it -- using it  
19 themselves or selling it to somebody else.

20 MR. SCHMIDT: They use it on their channels.

21 JUDGE SIPPEL: Yes.

22 MR. SCHMIDT: They might buy the programming from someone  
23 else. They might do reruns, --

24 JUDGE SIPPEL: Oh, I see.

25 MR. SCHMIDT: -- they might do their own original things

1 but they run the channels. WE tv is programming. Wedding Central  
2 is programming. GSN is programming, just now owned by Cablevision.

3 JUDGE SIPPEL: Are they trying to sell their programming  
4 now, Rainbow, any of their programming? GSN might be trying to  
5 sell its programming to Cablevision. Are they trying to sell some  
6 of their programming to Comcast?

7 MR. SCHMIDT: We are not selling our programming. We are  
8 selling the full channel to Cablevision's customers. So, we sell  
9 our channel to Cablevision's customers in the same way that WE tv  
10 sells their channel to the Cablevision's customers.

11 JUDGE SIPPEL: Well, doesn't Cablevision assign you the  
12 channel?

13 MR. SCHMIDT: They assign us the channel, correct. But  
14 the content that runs on the channel --

15 JUDGE SIPPEL: Yes, it is your content.

16 MR. SCHMIDT: -- is what we are selling. It may be  
17 content that we developed. It may be content we had someone  
18 develop. It could come to us in a bunch of different ways but yes,  
19 WE tv, that is the essence here. WE tv is in that same programming  
20 bucket that GSN is in. This is the WE tv -- this that they are  
21 owned by Cablevision. This is WE tv talking to the other  
22 Cablevision channels about who they are. Let me explain who we  
23 are. Hopefully, this will give our Sundance neighbors an idea of  
24 who we, at WE tv, are.

25 And on the next page of this document, she says who they

1 are. She says this is a chart of our direct competitors. Those  
2 are the words of the President of WE tv, Kim Martin, when she is  
3 explaining who they are to their affiliated channels, to the other  
4 channels owned by Cablevision.

5 And not surprisingly, when she identifies our direct  
6 competitors, she identifies [REDACTED], [REDACTED], [REDACTED], women's  
7 networks, and she identifies GSN.

8 JUDGE SIPPEL: Now, where is this? What year was that?

9 MR. SCHMIDT: This was in a 2008 presentation, at the end  
10 of 2008.

11 JUDGE SIPPEL: Okay. Did that consistently hold up in  
12 continuing years in this type of a --

13 MR. SCHMIDT: They have different documents where they --  
14 in our documents, we consistently identify WE tv as a competitor of  
15 ours. They have different documents. Sometimes they do, sometimes  
16 they don't. This is not the only document where they identify GSN  
17 as a competitor.

18 JUDGE SIPPEL: Okay. Okay, I see. That was the only  
19 other question I had. That's all right. Go ahead.

20 MR. SCHMIDT: So, that is the state of the networks --

21 JUDGE SIPPEL: Oh, yes! Did you get a -- was GSN's  
22 channel located in the same degree of favorability as WE tv or  
23 marriage something?

24 MR. SCHMIDT: That is a perfect segue, Your Honor,  
25 because what I was going to say, and this is tab 9 in Your Honor's

1 binder, the question Your Honor is asking about is item five on  
2 this list, favorable channel placement.

3           What I wanted to say next is that even though WE tv and  
4 GSN were similarly situated and Wedding Central, which was  
5 launching was trying to become similarly situated, was trying to  
6 compete for the same viewers, they were treated entirely  
7 differently by Cablevision. That is what Tab 9 shows, the  
8 different treatment by Cablevision. And it happened in a bunch of  
9 different ways, including item number 5, what Your Honor asked  
10 about, favorable channel placement.

11           So, just to run through them quickly and then I will give  
12 Your Honor a couple of examples, including on favorable channel  
13 placement.

14           They didn't have arm's length bargaining with the  
15 channels. Their distribution side didn't have arm's length  
16 bargaining with the programming side. As a result, the programming  
17 side got above market carriage. We saw that with Wedding Central,  
18 where Cablevision gave Wedding Central carriage that no one else in  
19 the marketplace would give it.

20           I mentioned GSN not being able to renew its contract with  
21 Cablevision. They gave contracts to their channels when their  
22 channels wanted contracts.

23           This is a really important one. They chose not to  
24 enforce contractual provisions against the channels they owned, to  
25 their detriment, to the detriment of their distribution side.

1 Favorable channel placement, which Your Honor asked about, which I  
2 will come back to. Marketing support, giving benefits to promoting  
3 their channels that they don't give a company like GSN. And then  
4 the core allegation in this complaint, they protect their channels  
5 from tiering. They don't protect their non-affiliated channels  
6 like GSN from tiering.

■ [REDACTED]  
■ [REDACTED]  
■ [REDACTED]  
■ [REDACTED]  
■ [REDACTED]  
12 MR. SCHMIDT: I want to be fair to Cablevision. Mr.  
13 Cohen and I specifically discussed that contractual term and not  
14 mentioning it in open court. So, I don't want to trip over that  
15 agreement by mentioning it.

16 JUDGE SIPPEL: All right. You want to just drop that?  
17 You want to drop it for now?

18 MR. SCHMIDT: It is going to come up in one of the  
19 documents. That issue will come up in one of the documents.

20 JUDGE SIPPEL: All right. Let's leave it alone then.  
21 Let's leave it alone.

22 Let me ask one other question here. You have this  
23 favorable channel -- oh yes, protection from tiering.

24 MR. SCHMIDT: Yes.

25 JUDGE SIPPEL: Now of course that is a word of art, I



1 guess, that you have selected for litigation purposes. But it  
2 could mean that they just never thought of tiering that one.

3 MR. SCHMIDT: That is what it means. That standard, that  
4 risk doesn't apply to their channels. They never considered  
5 tiering them.

6 Mr. Bickham says I have this test. It is an intuition  
7 but I have this test where if I look at a channel when I am sitting  
8 at home two or three times a month for five minutes at a go and I  
9 think this isn't must have programming, then that channel can get  
10 tiered. That is where we are going to look to purportedly try to  
11 save money. That test never gets applied to their channels. He  
12 doesn't even watch Wedding Central; the basic test doesn't even get  
13 applied. He knows without watching that it is not must have  
14 programming, that it fails the test, but they are not subject to  
15 that tiering. That discussion never even happens. That is  
16 protection from tiering.

17 JUDGE SIPPEL: Do you know if any cable company, big  
18 cable company that is integrated ever puts their own programming up  
19 on a high tier?

20 MR. SCHMIDT: I think there are sports channels that they  
21 probably do regional sports channels.

22 JUDGE SIPPEL: Regional sports channels?

23 MR. SCHMIDT: Yes, they go on higher tiers.

24 JUDGE SIPPEL: Regional. That's interesting.

25 MR. SCHMIDT: Yes.

1 JUDGE SIPPEL: And ESPN usually goes up?

2 MR. SCHMIDT: ESPN usually does not. Sometimes some of  
3 ESPN's family's channels do, ESPNU or some of the affiliate  
4 channels. ESPN is, as I understand it --

5 JUDGE SIPPEL: Unique.

6 MR. SCHMIDT: -- hardly ever tiered. Yes.

7 JUDGE SIPPEL: Because of why? Because of their power?

8 MR. SCHMIDT: Because of its popularity.

9 JUDGE SIPPEL: Their power. Their power to bargain.

10 MR. SCHMIDT: Yes, that is why they get paid a rate that  
11 for a company like GSN is to the moon, in terms of how high it is.

12 So, let me give a couple of examples of what I am talking  
13 about on this board, if I may. The first one is tab 11 -- tab 10.

14 JUDGE SIPPEL: Ten, okay.

15 MR. SCHMIDT: And this is just an example of how they  
16 don't have arm's length negotiations with themselves. This is  
17 people in the distribution, in the cable on talking about having to  
18 deal with Wedding Central and how they can't exploit Wedding  
19 Central in the same way they can exploit other channels that they  
20 don't own because, in their words, ridiculously annoying; I just  
21 don't have the same leverage to beat them up because they go crying  
22 to Dad and there is a little smiley face emoticon. I can only  
23 imagine what it is like with companies they don't own.

24 That is the point of no arm's length bargaining. They  
25 can't exploit the channels they don't own because they go crying to

1 Dad. And as result, the channels -- I'm sorry. They can't exploit  
2 the channels they own because they go crying to Dad and, as a  
3 result, they get more favorable -- the channels they own get more  
4 favorable carriage.

5 JUDGE SIPPEL: Was somebody deposed on this document?

6 MR. SCHMIDT: Yes, and Your Honor is going to hear  
7 testimony from Mr. Montemagno who is actually a recipient of this  
8 document.

9 JUDGE SIPPEL: Now, who are all these people that have  
10 CC'd on it?

11 MR. SCHMIDT: These are all people in the Cablevision  
12 arm. I believe they are all people in the Cablevision distribution  
13 arm. Although, if Your Honor looks lower in the chain, Robert  
14 Broussard is a witness on the programming side for Cablevision.

15 What you see in these documents, oftentimes, is there is  
16 kind of a comingling of functions between the two arms of  
17 Cablevision but this document is a document where the programming  
18 side at Cablevision Mr. Broussard, comes to the distribution side  
19 and then the people on the distribution side start complaining  
20 amongst themselves about how they can't beat them up the way they  
21 would if it was an unaffiliated network, if they didn't own them,  
22 because you can go crying to Dad.

23 JUDGE SIPPEL: So, all these people, Weinstein, Norton,  
24 and Sam and et cetera are all on the distribution side.

25 MR. SCHMIDT: I think that is correct.

1 JUDGE SIPPEL: Okay.

2 MR. SCHMIDT: Mr. Cohen will tell me if I am wrong.

3 JUDGE SIPPEL: Well, for the most part.

4 MR. SCHMIDT: For the most part. The next document, tab

5 11. This is testimony from James Dolan. He will not be appearing.

6 Mr. Dolan sits at the top of the Cablevision operation on  
7 both the programming side and the distribution side. The senior  
8 most witness in this case.

9 JUDGE SIPPEL: Is he one of those what do you call them,  
10 a point witness or something that --

11 MR. SCHMIDT: Apex.

12 JUDGE SIPPEL: Yes, he is an apex witness.

13 MR. SCHMIDT: No.

14 JUDGE SIPPEL: He is objected to as an apex witness?

15 MR. SCHMIDT: He was objected to, Your Honor.

16 JUDGE SIPPEL: As an apex witness?

17 MR. SCHMIDT: Yes, Your Honor allowed us to depose him,  
18 based on his involvement and the facts of this case.

19 JUDGE SIPPEL: I'm just sure it is about that context of  
20 an apex witness. I think that is a New York deal.

21 MR. SCHMIDT: I suspect Mr. Cohen and I have both  
22 objected to witnesses as apex witnesses. We just disagreed on the  
23 application of that rule here.

24 If Your Honor looks at page 15 --

25 JUDGE SIPPEL: I mean do they have the nerve to ask that

1 question on a bar exam, an apex witness?

2 MR. SCHMIDT: It's been a long time since I have taken  
3 the bar exam, Your Honor.

4 JUDGE SIPPEL: I'm just -- okay. I'm sorry. Go ahead.  
5 I didn't mean to interrupt.

6 MR. SCHMIDT: Page 15 of tab 11, Mr. Dolan's testimony,  
7 the CEO of all of Cablevision. This is him acknowledging that they  
8 treat themselves differently, that the distribution side treats the  
9 programming side that they own differently.

10 I asked him, do you know why you were the only ones for  
11 the bulk of the carriage for Wedding Central. His answer: You  
12 know we were one company and I believe we were, you know, trying to  
13 determine whether it was a viable product or not. So, we gave it  
14 carriage.

15 Question: When you say you are one company, you are  
16 talking about the cable side and the network side. Answer: Right.

17 That is him saying they treat their channels differently  
18 because they are one company. That is an admission, in our view,  
19 of discrimination; treating the channels they own differently  
20 because they are part of the one company. Because, as we saw in  
21 the prior email, the channels can go crying to Dad if they don't  
22 like the decision that is made by the distribution side.

23 A few pages later with Mr. Dolan, at page 47, on the next  
24 page in Your Honor's binder.

25 JUDGE SIPPEL: Yes, I have it. I am with you.

1 MR. SCHMIDT: Down at the bottom, we asked him: Do you  
2 know that that is illegal? Do you know about Section 616? Are you  
3 aware of any rules that apply on the cable side, on the MVPD side,  
4 that say if they are an MVPD, there are rules that govern how you  
5 make decisions with respect to carriage of an affiliated network.  
6 And he answered I am not familiar in the context that you are  
7 saying, although I do have a very capable legal team that monitors  
8 all of our negotiations. I am sure if there is such a rule, right,  
9 that we are complying.

10 The very law we are here to talk about today, Section  
11 616, the CEO of Cablevision doesn't know about. It is not  
12 surprising that he acknowledges that they act differently towards  
13 the channels they own because they are all one company. They are  
14 all one family.

15 JUDGE SIPPEL: Now there was a document, maybe it was in  
16 your trial brief, where the word family was protected from the  
17 public. You have just unleashed that dog. I mean, can family be  
18 a confidential term? Family?

19 MR. SCHMIDT: Your Honor, that was our designation as  
20 confidential.

21 JUDGE SIPPEL: Yes, you did it.

22 MR. SCHMIDT: I think if we designated it as family it  
23 was because we thought it was designated family by you guys.

24 JUDGE SIPPEL: I mean, that's the kind of stuff that gets  
25 me -- drives me crazy at night. Never mind. It's been done.

1           It's not a big deal. It's just me. But, go ahead.

2           MR. SCHMIDT: So this document that's now at document Tab  
3 12, is a protected document. And this goes to the point,  
4 non-enforcement of the contractual provisions.

5           This is Cablevision talking internally. And if Your  
6 Honor turns to the second page.

7           JUDGE SIPPEL: Right.

8           MR. SCHMIDT: Of the analysis, the language we've  
9 highlighted, they estimate, they come up with a specific dollar  
10 estimate of how much money they would give up if they enforced  
11 their own contractual provisions against their affiliated  
12 "networks."

13           They gave a specific dollar range. And I want to ask  
14 Your Honor to focus on that dollar range. I can't read it into the  
15 record.

16           But, if Your Honor focuses on that dollar range, and then  
17 listens for the amount they claimed they were going to save by  
18 carrying GSN, it falls smack in that dollar range.

19           The amount they claimed they were saving by carrying GSN,  
20 they could have saved just by enforcing their own contractual  
21 provisions against themselves. It's flat in that range that you  
22 see.

23           JUDGE SIPPEL: That's another thing that I'm sort of  
24 confused about. If you have a family, what difference does it make  
25 of whether or not you seek to get -- you have a gain or a loss in

1 that context?

2 It's all going to come out in the wash in a consolidated  
3 financial statement at the end of the year, isn't it?

4 MR. SCHMIDT: They're treated separately. They're  
5 supposed to be treated separately under Section 616. You can't say  
6 we're going to give you -- we're going to negotiate a provision  
7 with a channel we own and then not enforce it.

8 Whereas we're going to enforce it with the channels we  
9 don't own. That's what Section 616 says. You can't condition a  
10 term of carriage.

11 And this contractual provision is very clearly a term of  
12 carriage. You can't condition a term of carriage based on  
13 affiliation or non-affiliation.

14 Ultimately, I think Your Honor's view is the way they  
15 operate. They say well, if it's all going to come out, why do we  
16 care?

17 But the law says they can't do that. The law says that  
18 the price of owning programming is they got to treat it as  
19 distinct.

20 They got to treat the programming the same way they would  
21 treat programming they don't own. And when they have a contractual  
22 provision and they say well, we own you. [REDACTED]

[REDACTED]  
24 But we're going to save money by cutting another network.  
25 We're going to save as much or less money by cutting another



1 network. And that's discrimination.

2 JUDGE SIPPEL: Well, if you got a big company and you  
3 have a break out of something like this, let's say with  
4 programming, then basically you're making that -- you're making  
5 that a profit center.

6 MR. SCHMIDT: Right.

7 JUDGE SIPPEL: That's -- in business terms, that's a  
8 profit center. So you want to measure how well they're doing in  
9 programming versus let's say distribution.

10 So you want a measure report. You want to know if the  
11 executive that's running that operation is -- is he or she is  
12 making the mark.

13 So you have to have to have something to measure them  
14 with. So they make them into a profit center.

15 But at the end of the year when you file with the SEC,  
16 you've given them consolidated statements. So it all comes back in  
17 the wash.

18 MR. SCHMIDT: I think their statements actually break it  
19 down by business line.

20 JUDGE SIPPEL: Okay. Business line.

21 MR. SCHMIDT: They do account by business line, which  
22 includes programming. It includes distribution.

23 But what Section 616 says is, they can't play games with  
24 how they account for their money to favor their own channels. They  
25 can't go out in the marketplace to give a different example, and

1 say, we can't --

2 JUDGE SIPPEL: You can't cook the books.

3 MR. SCHMIDT: They can't cook the books. We think WE tv  
4 is worth \$100.00 a subsidiary. We are going to pay ourselves  
5 \$100.00 a subsidiary because it's all just money passing back and  
6 forth between the two arms of the same family.

7 And we're going to do that because then we're going to  
8 say to everyone else, hey, we pay our -- we pay WE tv \$100.00 a  
9 sub. You should pay them that too.

10 Section 616 says that kind of differential treatment is  
11 improper. They can't say well, we own the airwaves in our market.  
12 We're going to give them a better channel.

13 Or we're going to give them a better tier because we own  
14 them. And then at the end of the day, the money we're paying  
15 ourselves or whatever we're losing from carrying ourselves at a  
16 broad tier that we don't merit, it all comes out in the wash  
17 because we're one family.

18 Section 616 prohibits that. If Section 616 didn't exist  
19 we wouldn't be here. But, with Section 616, they can't treat  
20 themselves differently.

21 And when they say to themselves, we're going to negotiate  
22 a standard contract term with you like we do with others, but then  
23 we're going to choose not to enforce it [REDACTED]  
[REDACTED], equivalent or actually more than what we claim we save by  
25 carrying GSN, that's a violation.

1           That's different treatment on the basis of affiliation in  
2 terms of not enforcing the contracts against themselves.  
3 Non-affiliation in terms of saying we're going to save money by  
4 punishing GSN instead of just agreeing to do what we said we would  
5 do when we put this down on paper.

6           That is cooking the books. Saying, oh, we'll put this  
7 contract provision in, but we won't enforce it.

8           JUDGE SIPPEL: I hear you. But what about these things  
9 like a, let's say there was some -- something in a trial brief  
10 about when Wedding Central was starting off, GSN paid things like  
11 some of their preliminary operating expenses.

12           Or, let's say, well let me give some examples, let me say  
13 that. Let's say that we're using pencils that said Cablevision on  
14 them. That were given to them by the supply office in, you know,  
15 in Cablevision.

16           MR. SCHMIDT: Yes.

17           JUDGE SIPPEL: Is that a vio -- is that a technical  
18 violation of 616?

19           MR. SCHMIDT: I think what Your Honor is thinking of  
20 there is more support --

21           JUDGE SIPPEL: Marketing support is what they got.

22           MR. SCHMIDT: Yes.

23           JUDGE SIPPEL: Can't do it?

24           MR. SCHMIDT: You can't do it if it's based on  
25 affiliation. If they're saying we're going to give you special

1 treatment because we own you and we want to help you, and no one  
2 else gets that treatment, even if they're equally deserving based  
3 on their standing in the marketplace, that's discrimination.

4 That's what Section 616 prohibits. Giving marketing  
5 support can be just as powerful as giving favorable channel  
6 placement. It can be just as powerful as giving favorable tiering  
7 or broad penetration.

8 The idea is if you own a cable company and you choose to  
9 have channels, you've got to treat the channels the way that you  
10 own --

11 JUDGE SIPPEL: Well, wouldn't it make more --

12 MR. SCHMIDT: The way you would other channels.

13 JUDGE SIPPEL: Wouldn't it make more sense for  
14 Cablevision to have -- not to have any in-house programming? Get  
15 it all outside and then you can do what you want.

16 And it would be much cheaper for you.

17 MR. SCHMIDT: Well, that -- there was an argument when  
18 Section 616 was passed that you just shouldn't allow cable  
19 companies to own channels for that reason.

20 The compromise was that will be allowed. Vertical  
21 integration will be allowed. But they have to treat the channels  
22 they own the same way they treat everyone else.

23 And when they give these kinds of special benefits to the  
24 channels they own, they're not treating them the same way.

25 They're treating them differently not based on their

1 standing, not based on their strength, not based on merit. But  
2 based on affiliation.

3 JUDGE SIPPEL: So I was arguing socially the merit with  
4 that.

5 (Laughter)

6 JUDGE SIPPEL: I'm sorry. Okay, let's go. Keep going.

7 MR. SCHMIDT: Well, I said I would give Your Honor an  
8 example of favorable channel placement. I think Your Honor's  
9 remembering from prior hearings, the concept of neighbor hooding.  
10 Tab 13 speaks to this idea.

11 Tab 13 is a Cablevision document from Kim Martin. As I  
12 mentioned, then the President of WE tv. Where she talks about what  
13 good channel placement they get from Cablevision.

14 She says, in the Cablevision footprint where WE as  
15 Channel 42 and Lifetime as 45, WE is in the top 20 cable nets. And  
16 Lifetime barely beats us. Now imagine if we had this good channel  
17 placement around the country.

18 That's discrimination. Giving themselves favorable  
19 channel placement that people around the country don't give them,  
20 even if they give GSN poor channel placement.

21 And then a final quote in this section. Your Honor asked  
22 the question about protection from tiering. If Your Honor looks at  
23 Tab 14.

24 This is further testimony. We looked at some earlier  
25 testimony of Mr. John Bickham, the senior person on the

1 distribution side of Cablevision. We asked him just to be very  
2 clear on page 104.

3 Had Cablevision ever considered potentially either  
4 eliminating or moving WE in an effort to reduce its programming  
5 costs? I don't recall ever having that conversation with anyone.

6 Page 127, the next page in this testimony is exactly the  
7 same point. Was there any -- was there ever any consideration of  
8 moving any of the regular networks, that's WE tv, Wedding Central,  
9 other networks, into the IO Sports and Entertainment Tier? Not  
10 that I'm aware of.

11 That's what we're speaking of when we speak of protection  
12 from tiering. This idea that they're not going anywhere. They're  
13 guaranteed that broad carriage.

14 And we know from the first email in this series why they  
15 are. It's because they'll go crying to dad if they don't get  
16 favorable carriage.

17 We know from the second document in the series, Mr.  
18 Dolan's testimony, that if they cry to dad, he views it as one  
19 company. And they treat themselves differently than how they treat  
20 the rest of the marketplace.

21 And of course the tiering happened as to GSN. And that's  
22 what I want to turn to next. What's happening in the immediate  
23 aftermath of the tiering, which is highly, highly relevant. And  
24 that's Tab 15.

25 The tiering was announced to the public on February 1,

1 2011. This is a document internal to Cablevision from the day  
2 after. And I want to give a little bit of context for this  
3 document.

4 Earlier, several months earlier, Cablevision had  
5 cancelled the FOX television channel. One of the most popular  
6 television channels there is.

7 And they'd done it at an incredibly controversial time.  
8 New York viewers had missed the entire National League Championship  
9 on television.

10 They'd missed two games of the World Series. They'd  
11 missed a New York Giants football game in addition to other  
12 programming. It was a very high profile thing.

13 In this email at Tab 15, Cablevision is internally saying  
14 they're getting more calls by a multiple of more than two in the  
15 first day after pulling GSN then they got on any day with the Fox  
16 News dispute.

17 They can take down two games of the World Series, the  
18 entire National League Championship, they're getting less calls  
19 then they got when they pulled GSN off the air.

20 [REDACTED] calls regarding GSN.

21 JUDGE SIPPEL: Let me ask you, who is Rocky Boler?

22 MR. SCHMIDT: Rocky Boler I believe is in the customer  
23 division at Cablevision.

24 JUDGE SIPPEL: He's like a, what do you call them, a  
25 customer relations guy? Or customer --

1 MR. SCHMIDT: I don't recall if he's in your distribution  
2 or if he's in customer.

3 JUDGE SIPPEL: And all these people, Hargis and -- these  
4 are all --

5 MR. SCHMIDT: These are all Cablevision people.

6 JUDGE SIPPEL: Yes. I know they're -- that they are.  
7 But what do they do for Cablevision?

8 MR. SCHMIDT: I think they have different roles. I think  
9 Trierweiler was in the distribution division.

10 JUDGE SIPPEL: I mean, how -- okay. Are there any -- are  
11 any big shots getting this information?

12 MR. SCHMIDT: No, that happens in the next email.

13 JUDGE SIPPEL: Oh.

14 MR. SCHMIDT: The big shots step in, in the next email.

15 JUDGE SIPPEL: Okay. I'm sorry.

16 MR. SCHMIDT: Or the medium shots. The big shots aren't  
17 coming in at this time.

18 JUDGE SIPPEL: Boy, it's a good thing nobody pulled that  
19 women's soccer game because of this.

20 (Laughter)

21 JUDGE SIPPEL: They'd be hanging in the wind someplace.  
22 Go ahead. All right.

23 MR. SCHMIDT: So, the next email is -- we're now up to  
24 February 5. And they're talking about what's happening as the  
25 public learns about this tiering decision. This is Tab 16 in the



1 binder.

2 JUDGE SIPPEL: I got you.

3 MR. SCHMIDT: And if Your Honor looks at the second  
4 highlighted --

5 JUDGE SIPPEL: You go from February 2 to February 5.

6 MR. SCHMIDT: Exactly. If Your Honor looks at the second  
7 highlighted portion, these Cablevision people are discussing news  
8 reports about their tiering decision.

9 And one of them writes, did you see the field  
10 communication on the new name of the IO Sports Pack? Your Honor  
11 will remember, they called it the Sports Tier.

12 When they tiered GSN, they realized GSN didn't belong  
13 there. So they kind of renamed it the Sports and Entertainment  
14 Tier.

15 And they knew they were kind of doing something dubious.  
16 That's what he's talking about here. Do you see the new field  
17 communication on the new name of the IO Sports Pack.

18 I'm praying some employee doesn't leak it. We need to  
19 get some more "entertainment" into that thing pronto, to validate  
20 the shift.

21 There's further discussion, including Mr. Montemagno.  
22 He's the medium shot who I was alluding to, who we're going to hear  
23 from.

24 And then they recognize, reversal not terrible. If they  
25 change their mind, it wouldn't be terrible.

1           It would look like we screwed up. Tried to pull one  
2 over. Got slammed and thought better of it. But at least the  
3 channel will be back.

4           Almost [REDACTED] calls over two days is a lot of outrage,  
5 even if it hasn't hit the press. So by --

6           JUDGE SIPPEL: Wait, I'm sorry. Where are you in that?  
7 You're going from --

8           MR. SCHMIDT: From the bottom to the top. So that's the  
9 top --

10          JUDGE SIPPEL: Oh, I'm sorry.

11          MR. SCHMIDT: Highlighted portion. The first highlighted  
12 portion on the page.

13          JUDGE SIPPEL: It says, have you seen the field, we need  
14 to get some entertainment to validate the shift.

15          MR. SCHMIDT: That's the first quote. The second quote  
16 is above that where they say, reversal not terrible. We --

17          JUDGE SIPPEL: Oh, I see. I see what you're saying. I  
18 see that's the sequence.

19          MR. SCHMIDT: Yes.

20          JUDGE SIPPEL: That's right, I can't. I always make  
21 that, I get confused. But you're right. You're right. You're  
22 absolutely right.

23          MR. SCHMIDT: No one ever says that to me Your Honor.

24          (Laughter)

25          JUDGE SIPPEL: Well --

1 MR. SCHMIDT: Certainly not on this side of the table.

2 JUDGE SIPPEL: That was one little page of an email.

3 (Laughter)

4 MR. SCHMIDT: Oh, no, you can tell, I'll take what I can  
5 get.

6 (Laughter)

7 MR. SCHMIDT: We'll look like we screwed up. Tried to  
8 pull one over. Almost [REDACTED] calls over two days is a lot of  
9 outrage.

10 This is them just three or four days after the decision  
11 has been announced, recognizing this may not make sense. We may  
12 need to reverse it. And this is a lot of outrage.

13 JUDGE SIPPEL: But who's saying that? Montemagno?

14 MR. SCHMIDT: Montemagno's report --

15 JUDGE SIPPEL: Montemagno?

16 MR. SCHMIDT: Is reporting that up to him.

17 JUDGE SIPPEL: That's what Monte -- oh, he's saying that.  
18 Tom Montemagno was saying that?

19 MR. SCHMIDT: No, it's actually, it's hard to follow in  
20 the way the email's produced. But you see, it says from Jim to Tom  
21 Montemagno.

22 JUDGE SIPPEL: Right.

23 MR. SCHMIDT: Right above. So, it's Jim saying it to Tom  
24 Montemagno.

25 JUDGE SIPPEL: Jim Miala?

1 MR. SCHMIDT: Jim Miala saying it to Tom Montemagno.

2 JUDGE SIPPEL: Who is who? Who is what?

3 MR. SCHMIDT: I thought he was in that -- Montemagno's  
4 reporting.

5 MR. COHEN: He's not.

6 JUDGE SIPPEL: I'm sorry?

7 MR. COHEN: He's in public relations, Your Honor.

8 JUDGE SIPPEL: PR? PR.

9 MR. SCHMIDT: So their PR people are saying for  
10 customers, we should reverse this. Their distribution people end  
11 up saying no, that's not how we do business.

12 More customer outrage. Tab 17.

13 JUDGE SIPPEL: Well that puts a bit that puts a different  
14 flavor to the whole thing if you're dealing with public relations  
15 people.

16 MR. SCHMIDT: You're dealing with the people whose job it  
17 is to look after their customers. That's who's reporting this  
18 level of outrage that they've not seen before. Even in support of  
19 the World Series.

20 JUDGE SIPPEL: Well, I take -- okay, I didn't mean that  
21 in a critical way. Okay. Keep going.

22 MR. SCHMIDT: Let me just flip ahead. Tab 17 simply  
23 shows that by the end of the week the complaints are coming up to  
24 [REDACTED] people.

25 But I want to focus on Tab 18 where we have testimony

1 from Mr. Bickham.

2 JUDGE SIPPEL: Let me see, 18 you want -- where are you  
3 going now?

4 MR. SCHMIDT: The next Tab, Your Honor.

5 JUDGE SIPPEL: Eighteenth Tab.

6 MR. SCHMIDT: Yes.

7 JUDGE SIPPEL: Well, between what period? This is in Feb  
8 -- oh, so it's about like between February 2 --

9 MR. SCHMIDT: Yes.

10 JUDGE SIPPEL: And February 10.

11 MR. SCHMIDT: Yes.

12 JUDGE SIPPEL: It's up to 30 -- 27,000.

13 MR. SCHMIDT: Yes.

14 JUDGE SIPPEL: I thought we were talking about 7,000?  
15 I'm talking to myself. No, 27 -- okay, keep going. Keep going.  
16 Eighteen, I got it.

17 MR. SCHMIDT: So, let me come back to Mr. Bickham. I  
18 started with Mr. Bickham explaining why he made the decision to  
19 tier GSN. How it wasn't must-have programming.

20 We asked him, can you give me a sense of what you mean by  
21 that? What is must-have TV? He answered, it's the kind of  
22 programming that if you lose it people will call and disconnect  
23 because you don't have it. It's no more complicated than that.

24 That's what they had. His test, his must-have test, was  
25 met by the lot of outrage. Using their words, the lot of outrage

1 that they received.

2 They avoided having people disconnect by instead giving  
3 them the Sports Tier for free. Giving up that money for the Sports  
4 Tier. Giving it away for free.

5 They proved to themselves under their definition, it  
6 should not have been tiered.

7 JUDGE SIPPEL: Has that ever been done before?

8 MR. SCHMIDT: As what?

9 JUDGE SIPPEL: That type of remedy? Remedial help.

10 MR. SCHMIDT: I'm not familiar with it.

11 JUDGE SIPPEL: I'm giving you something for free, six  
12 months.

13 MR. SCHMIDT: Yes. I'm sure it happens. I'm not  
14 familiar with it. This was unusual in terms of the level of  
15 outrage. And what they had to do to try to fix it when the natural  
16 thing to do was to reverse the tiering decision.

17 And that leads to -- I did want to touch on the D.C.  
18 Circuit decision that Your Honor referenced before the hearing in  
19 the Tennis Channel case. Because I do think that's important and  
20 I don't want to let that go unaddressed.

21 The D.C. Circuit in the Tennis Channel decision said that  
22 there are three ways a company can show that an act was motivated  
23 by discrimination on the basis of affiliation and not for some  
24 legitimate business reason. Three ways.

25 The first way is pretext. The justification that's been

1 given is the pretext.

2 The second way is what's called the incremental loss  
3 test. And that's the idea that they're actually losing more money  
4 by treating themselves favorably than they would by continuing to  
5 treat us fairly. Incremental loss test.

6 The third test is the net benefit test. We would have  
7 benefitted them where we were.

8 We're going to produce evidence on each of those tests.  
9 This consumer outrage that Cablevision experiences is relevant to  
10 each of those three tests.

11 It's particularly relevant to the pretext test. When  
12 their decision maker says, I made the decision because it's not  
13 must-have TV, and then their customers tell them no, you're wrong,  
14 and they still stick to that view, that's pretext.

15 Tab 19 speaks to the incremental loss test. Tab 19  
16 simply shows they're losing more money with what they pay WE tv for  
17 broad carriage than what they said they were saving by GSN, by a  
18 factor of [REDACTED].

19 That's incremental loss. They're losing more money  
20 keeping WE tv. We'll have a lot of other evidence on this point.

21 But this speaks to it very simply. They're losing more  
22 money keeping WE tv where it is. Favoring their affiliate than  
23 they would lose treating GSN fairly.

24 Finally, on the net benefit test, that's a very  
25 complicated test. We'll have extensive factual evidence and

1 economic evidence on that point.

2 But for my opening, I wanted to emphasize just a very --  
3 a very simple point on that.

4 JUDGE SIPPEL: What is the motive for doing that? If you  
5 can -- if you can arithmetically demonstrate that they're hurting  
6 themselves by not treating a program or -- fairly, then why do they  
7 do it?

8 MR. SCHMIDT: They did it because of Your Honor's earlier  
9 question. It's all one company. So if they pay money for their  
10 network that isn't justified on merit, it's still all their money  
11 at the end of the day.

12 And what they hope is, that they can benefit their  
13 network in the marketplace.

14 It goes back to the slide about how favorably they  
15 carried Wedding Central. Their hope is, if they can favor  
16 themselves, they can benefit themselves in the marketplace.

17 The same is true on the flip side. If they can punish a  
18 competitor, if they can treat GSN badly because it's a competitor,  
19 they can hurt it in the marketplace.

20 That's what Section 616 is about. That's what it  
21 prohibits.

22 JUDGE SIPPEL: It's like well, -- I'm not going to be  
23 careful, but I'm going to say it. Can you get me a copy of the  
24 latest 10-K for Cablevision?

25 MR. COHEN: Of course Your Honor.



1 JUDGE SIPPEL: It out to be with this. Go ahead.

2 MR. SCHMIDT: If we go to Tab 20, this is what I wanted  
3 to show Your Honor on the net benefit test. As I said, we're going  
4 to have a lot of economic evidence on the net benefit test.

5 We're going to have a lot of factual evidence on the net  
6 benefit test. But it seemed easy for purposes of the opening to  
7 look at the language they use when they describe net benefit.

8 This again is --

9 JUDGE SIPPEL: So, you're on Tab 20, right?

10 MR. SCHMIDT: Twenty, yes. Mr. Sapan, the senior most  
11 person on the programing side at Cablevision. I asked him, how  
12 would you prove net benefit if a company like Cablevision came to  
13 you and said, prove to us that you have a net benefit.

14 He said, well, I'd talk about what a great channel we  
15 are. I'd talk about our customers, all that. All things we're  
16 going to show we're equivalent or better than WE tv on.

17 But I then asked him, what if you had to quantify it?  
18 What if you had to put a number on your net benefit? What if you  
19 had to meet the test Cablevision is trying to make us meet in  
20 court? How would you do it?

21 This is Cablevision channels saying how they would  
22 quantify the net benefit they'd provide. I said to him, I take it  
23 if I say to you quantify, you've probably got some people you could  
24 turn to say let's do our best job. Let's run some numbers. See  
25 what we can come up with.

1 But, is there an easy way right now you could think of to  
2 quantify that? The net benefit you bring?

3 He says, if I were trying to do it easily and quantify  
4 it, I would probably change my nomenclature and say that there are  
5 surveys broadly that are done by third party on consumer  
6 perceptions of value.

7 He says, if I had to prove net benefit, I would turn to  
8 survey data. I said, is that things like beta? Beta is a type of  
9 survey that exists in the television industry where customers are  
10 asked to value television channels.

11 He says, yes. They're reflectively broadly of what  
12 customers think goes into a video bill.

13 That's how Cablevision's channels would quantify their  
14 net benefit if asked to do so. The next Tab is the expert report  
15 of --

16 JUDGE SIPPEL: Whoa. Whoa, whoa, whoa. Which one of the  
17 -- which one is he referring to? The WE programming or the GSN  
18 programming?

19 MR. SCHMIDT: He's saying generally for the programs he's  
20 responsible for, --

21 JUDGE SIPPEL: Yes.

22 MR. SCHMIDT: Which includes WE tv, which didn't at the  
23 time of the deposition, but before included Wedding Central and  
24 included some other channels.

25 JUDGE SIPPEL: Right.

1 MR. SCHMIDT: If you had to justify to a distributor, to  
2 a cable company, why you give them a net benefit, if you had to put  
3 a dollar sign on it, how would you do it?

4 And he says, I'd look at survey data. Survey data like  
5 beta data, which is what I'm going to turn to next, what that data  
6 showed.

7 JUDGE SIPPEL: So they actually did have a survey  
8 conducted?

9 MR. SCHMIDT: There are industry surveys that are  
10 conducted that look at how viewers think about television channels.  
11 And it includes questions about how they value television shows.

12 JUDGE SIPPEL: Go ahead.

13 MR. SCHMIDT: So if Your Honor looks at Tab 21.

14 JUDGE SIPPEL: All right.

15 MR. SCHMIDT: This is the testimony of Mr. Books, which  
16 Your Honor has seen. Mr. Brooks on the next page, page 50 of his  
17 report, talks about this very data that Josh Sapan of Cablevision  
18 says he'd turn to, to justify their net benefit.

19 And that data shows two things. Number one, it shows  
20 we're more valuable as perceived by consumers than WE tv.

21 And that the value consumers perceiving GSN as having, is  
22 more than [REDACTED] times higher than what Cablevision was actually  
23 having to pay for GSN.

24 That's how they would satisfy net benefit. This data is  
25 uncontested. They're going to say beta data doesn't matter.

1 But, it's uncontested what it shows. Under a simple  
2 analysis like that, we have a net benefit test.

3 JUDGE SIPPEL: Now this is a public survey information,  
4 is that right?

5 MR. SCHMIDT: I think it's proprietary. I think you have  
6 to pay for it. We have no objection to it being public.

7 JUDGE SIPPEL: Okay. But if you have to pay for it,  
8 basically, it's not protected material. It's available to the  
9 public?

10 MR. SCHMIDT: The public can come pay for it, yes.

11 JUDGE SIPPEL: Has to come and pay for it. So, maybe  
12 they can get it free in this case? What do you think?

13 MR. SCHMIDT: And they might be able to, Your Honor.

14 JUDGE SIPPEL: Let's do that. Okay, so, the perceived  
15 monthly value of network to GSN is \$1.51 but WE tv is \$1.34? Is  
16 that what that says?

17 MR. SCHMIDT: That's what that says.

18 JUDGE SIPPEL: Now, how are they going to come up with a  
19 subject, I mean, that's a very narrow number. That's a sharp  
20 pencil.

21 They get all that from surveying?

22 MR. SCHMIDT: They get that --

23 JUDGE SIPPEL: They -- go ahead.

24 MR. SCHMIDT: They get that from surveying customers.  
25 And you see below, there are other questions that they ask them.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 Do you like the network? What do you think about it? How  
2 satisfied are you?

3 It's an effort to try to quantify it. It's the effort  
4 that Mr. Sapan would turn to if he had to quantify it.

5 It's one measure of looking at it. We're going to have  
6 a lot of other evidence on net benefit. But this is one metric  
7 that they identified that we wanted to put in front of Your Honor.

8 JUDGE SIPPEL: And these -- these obviously, these are  
9 sold to the -- I gather these are sold to the MVPD -- I'm not going  
10 to use that, can we -- cable companies subscribe to this kind of  
11 stuff?

12 MR. SCHMIDT: They can. I think it's more channel  
13 supplied. Because they want to know what people think about them.  
14 And they want to be able to show --

15 JUDGE SIPPEL: Yes. I would think so. I would think so.

16 MR. SCHMIDT: Yes. Yes.

17 JUDGE SIPPEL: Is it pretty reliable stuff?

18 MR. SCHMIDT: That's going to be the dispute in the  
19 litigation. Their fact witness says that's what I turn to, to  
20 justify my work.

21 Their expert witness is going to say, oh, no one cares  
22 about it.

23 JUDGE SIPPEL: All right. Okay.

24 MR. SCHMIDT: So that's the tiering. That's the first  
25 act of discrimination.

1 JUDGE SIPPEL: Oh, yes.

2 MR. SCHMIDT: It continues to this day.

3 JUDGE SIPPEL: Yes.

4 MR. SCHMIDT: I want to talk about the second act of  
5 discrimination, which is after the tiering, they said the way you  
6 can come back is by helping us discriminate in favor of Wedding  
7 Central.

8 And I'll show Your Honor two documents on that point.

9 JUDGE SIPPEL: Okay.

10 MR. SCHMIDT: Tab 22 --

11 JUDGE SIPPEL: Right.

12 MR. SCHMIDT: Is an internal email on the -- on the  
13 distribution side at Cablevision where they had been approached by  
14 GSN about keeping GSN on the expanded basic tier.

15 And you see Mr. Montemagno in this email at the bottom  
16 that we've highlighted.

17 JUDGE SIPPEL: Right.

18 MR. SCHMIDT: It says Tom. That's a different Tom, Tom  
19 Rutledge. Tom, ask Broussard to come up for a list of asks for  
20 DIRECTV that would be worth our keeping GSN at status quo.

21 So, GSN was owned by two companies. One of them was  
22 DIRECTV. They asked someone at DIRECTV named Derek Chang. Your  
23 Honor has his testimony.

24 JUDGE SIPPEL: I do.

25 MR. SCHMIDT: You know the people at Cablevision, can you

1 talk to them and see if there's a way we can fix this?  
2 Cablevision's response is this email.

3 And it's notable that the people on the distribution side  
4 are being asked should we carry GSN? The first thing they do is  
5 they reach out to Broussard on the programming side and said can we  
6 get you anything?

7 Section 616 prohibits making distribution decisions on  
8 the basis of affiliation. That's literally what this document  
9 shows that they do.

10 They're presented with a distribution decision. They  
11 literally make it on the basis of affiliation because they  
12 outsource it to their affiliate. To their programming division.

13 The first thing they do when they get that question is  
14 Tom, who sits atop both sides, the distribution side and the  
15 programming side, Tom asks Broussard in the programming side, to  
16 come up with a list of asks for DIRECTV that would be worth our  
17 keeping GSN status quo.

18 That's what in fact they communicated to GSN as the  
19 condition for GSN keeping its carriage. Would be DIRECTV giving  
20 favorable treatment to Wedding Central.

21 We see that --

22 JUDGE SIPPEL: Oh, I see. The list of asks means  
23 benefits or favors that type of thing.

24 MR. SCHMIDT: Yes. What can we get in return? How can  
25 we exploit our decision to tier you by getting something for

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1 ourselves to persuade us to reverse it?

2 But it's not getting something for ourselves on the  
3 distribution side. It's not give us a better deal on the  
4 distribution side.

5 It's how can we help our affiliate? They're literally  
6 making their distribution decision on the basis of affiliation. On  
7 the basis of how we can help our affiliate on the programming side.

8 That's discrimination.

9 JUDGE SIPPEL: But that doesn't really come through loud  
10 and clear here.

11 MR. SCHMIDT: That's -- it comes through once you look at  
12 who the witnesses are. And it comes through in the next email.

13 They're telling the programming side --

14 JUDGE SIPPEL: I'm always one email behind.

15 (Laughter)

16 MR. SCHMIDT: If you go to the -- they're telling the  
17 distribution side, you go to the programming side and figure out  
18 what they want. And then on Tab 23 --

19 JUDGE SIPPEL: Who is Mac Budill?

20 MR. SCHMIDT: Mac Budill reports -- Mac Budill is between  
21 Tom Montemagno and John Bickham.

22 JUDGE SIPPEL: Okay.

23 MR. SCHMIDT: And actually, yes.

24 JUDGE SIPPEL: Between Montemagno and Bickham? And Mr.  
25 Bickham is the -- is higher than Mr. Montemagno?



1 MR. SCHMIDT: Yes, I don't mean to cut to the chase in my  
2 slides.

3 JUDGE SIPPEL: Go ahead. Go to it. Go to it.

4 MR. SCHMIDT: But if Your Honor looks at slide 30.

5 JUDGE SIPPEL: I'm going to do that right now.

6 MR. SCHMIDT: We actually tried to help on this point.  
7 It's way back at the end of my --

8 JUDGE SIPPEL: What Tab do you want me to go on?

9 MR. SCHMIDT: Tab 30.

10 JUDGE SIPPEL: Tab 30?

11 MR. SCHMIDT: Yes.

12 JUDGE SIPPEL: Okay. Slide Tab -- I got you. Oh, yes.

13 MR. SCHMIDT: We tried to sketch it out for Your Honor.  
14 The people on the programming side and the people on the  
15 distribution side. And then I mentioned Mr. Rutledge at the top of  
16 the two. And Mr. Dolan who Your Honor's heard from.

17 JUDGE SIPPEL: I got you. It's very helpful.

18 MR. SCHMIDT: And so you see Montemagno reports to  
19 Budill. Budill reports to Bickham. And what the email we were  
20 just looking at shows, is if Your Honor looks at the distribution  
21 side, the distribution side is getting a question.

22 And the first thing they do when they get the question,  
23 is they say, well, let's see what the people on the programming  
24 side what. Let's go to Broussard who is on the programming side.

25 JUDGE SIPPEL: Right.

1 MR. SCHMIDT: And that leads to the second act of  
2 discrimination. Which is, if Your Honor goes to Tab 23 --

3 JUDGE SIPPEL: Why is it a quarter after 12:00?

4 MR. SCHMIDT: Because we've been going for a little bit.  
5 And I'm almost done, Your Honor.

6 JUDGE SIPPEL: Okay. Go ahead.

7 MR. SCHMIDT: He says, I talked to Josh yesterday. Josh  
8 is on the programming side. He says he wants to get DIRECTV to  
9 carry Weddings.

10 That's what was communicated to GSN. Was the way to get  
11 fair carriage would be to give some benefit to our programming  
12 side. To get DIRECTV to carry Wedding Central.

13 That's the second more explicit act of discrimination  
14 where they literally make a decision about the terms of carriage  
15 based on affiliation. And they say if you want to play along, you  
16 got to help us discriminate in favor of Wedding Central.

17 That's the second act of discrimination. Let me very  
18 quickly run through harm and then I'll be done.

19 JUDGE SIPPEL: Go ahead.

20 MR. SCHMIDT: Tab 24. Your Honor asked the question  
21 about whether harm is judged on a local basis or on a national  
22 basis.

23 JUDGE SIPPEL: Right.

24 MR. SCHMIDT: Tab 24 speaks to the local basis. This is  
25 Dr. Singer, an economist Your Honor has heard before.

1           On the second page he talks about how much market share  
2 Comcast has -- Cablevision has within their market. 61.4 percent  
3 of the New York market.

4           If it's a local market test, there's no dispute, they  
5 have market share. It's not even a question. [REDACTED] of the  
6 New York market, of their market.

7           JUDGE SIPPEL: Okay.

8           MR. SCHMIDT: If Your Honor looks on a national basis, --

9           JUDGE SIPPEL: Where are we at?

10          MR. SCHMIDT: That's the next tab, Tab 25. There are  
11 specific harms that we have been able to quantify in terms of lost  
12 license fees, lost advertising revenues.

13          And Your Honor sees what that adds up too since the  
14 tiering in 2011. That's ongoing harm.

15          There also on Tab 26 --

16          JUDGE SIPPEL: Okay.

17          MR. SCHMIDT: A range of other harms that GSN has  
18 experienced. That Cablevision themselves recognizes.

19          JUDGE SIPPEL: This is in a national market?

20          MR. SCHMIDT: In the national market. It slows their  
21 growth. It impairs their ability to invest in original  
22 programming. The New York market is unique for advertising.

23          And then there's the potential domino effect as to other  
24 MVPDs.

25          And just very quickly on those. My last two documents.

1 JUDGE SIPPEL: I mean, it's really a domino effect, I  
2 mean, other than these MVPDs, in other words, would be doing the  
3 same thing because so and so gets away with it, or?

4 MR. SCHMIDT: Yes. Yes. And that's what you see at Tab  
5 27. Tab 27 is an internal Cablevision document. Kim Martin,  
6 President of WE tv saying, that they're unhappy, WE tv is unhappy  
7 with Time Warner repositioning them because it might start a domino  
8 effect with other carriers.

9 So, that's them recognizing this concern about a domino  
10 effect.

11 JUDGE SIPPEL: They were retiered by Time Warner?

12 MR. SCHMIDT: Yes, I think there was a question about  
13 Time Warner --

14 JUDGE SIPPEL: What position?

15 MR. SCHMIDT: Potentially retiering them. And they were  
16 concerned about it because they were concerned it might start a  
17 domino effect. That's why companies -- that's why networks do  
18 whatever they can to avoid tiering.

19 Last document before I give you the charts with the  
20 witnesses is ending with Mr. Dolan, the local CEO of both the cable  
21 side and the programming side.

22 This is him acknowledging the special position that  
23 Cablevision holds because of its customers. Is there significance  
24 to being the largest carrier in the number one or number two market  
25 in the country?

1 I think so. What is that? The viewers we have here, the  
2 customers we have are desirable customers I think.

3 I mean, it's kind of self-evident that being the largest  
4 operator in the largest market right here, that it gives you market  
5 power. It gives you ability to operate in a way that you know,  
6 that gives you more size than probably you actually already have.

7 This is their global CEO admitting A, they have market  
8 power, B they have power that outstrips their size because of the  
9 unique aspects of their market.

10 That's the harm case that we're going to prove. Being  
11 deprived of a company that has market power. Being deprived of a  
12 company that has very desirable customers that can punch above  
13 their weight in the words of their CEO, carries harm with it.

14 The last few slides are the witnesses Your Honor is going  
15 to hear from. Tab 29 are the GSN witnesses.

16 Three fact witnesses starting with Mr. Goldhill today.  
17 And then our two expert witnesses. Mr. Goldhill, Mr. Zaccario and  
18 Ms. Hopkins, who Your Honor is familiar with.

19 JUDGE SIPPEL: Right.

20 MR. SCHMIDT: And then we've also highlighted the  
21 Cablevision witnesses. Including ones Your Honor won't hear from  
22 through the course of the hearing.

23 JUDGE SIPPEL: Okay. What are these three tabs? They're  
24 empty tabs?

25 MR. SCHMIDT: Tab 30 is the Cablevision witnesses. And

1 then the rest are empty tabs. Yes.

2 JUDGE SIPPEL: Okay.

3 MR. SCHMIDT: That's our case, Your Honor. That's what  
4 we think the evidence will show.

5 Similarly situated networks by their own admission, in  
6 their own documents, treated entirely differently in ways both in  
7 terms of their favoritism of their own networks who's out of step  
8 with the marketplace.

9 And their discrimination against us is out of step with  
10 the marketplace. The rationale they give for that is a pretext.

11 They're losing more money discriminating in their favor  
12 than they would have been had they given us fair treatment. And  
13 using their own test their witnesses specified, we would bring them  
14 a net benefit.

15 And then of course the harm from in the words of James  
16 Dolan, their CEO, losing access to a company that has market power.  
17 That has some of the best customers in terms of advertisers being  
18 located in that market, the media being located in that market.

19 The harm that comes of it. That's what the evidence will  
20 show Your Honor.

21 JUDGE SIPPEL: Can you do this for me. Tell me, you've  
22 got to start with Mr. Goldhill.

23 MR. SCHMIDT: All right. Yes.

24 JUDGE SIPPEL: And what's -- what are the next witnesses  
25 you're calling and the order in which you're calling them?

1 MR. SCHMIDT: Well, right now that's a super state  
2 secret. But, it's Mr. Goldhill, Ms. Hopkins, Mr. Zaccario, Dr.  
3 Singer and Mr. Brooks.

4 JUDGE SIPPEL: Zaccario, okay. Singer and Brooks.

5 MR. SCHMIDT: That's our plan right now.

6 JUDGE SIPPEL: All right.

7 MR. SCHMIDT: Things might juggle, but I don't think they  
8 will.

9 JUDGE SIPPEL: All right. Just give me the -- so I'll  
10 have a score card. Okay.

11 And one other thing that beta information that we talked  
12 about, that beta survey.

13 MR. SCHMIDT: Yes.

14 JUDGE SIPPEL: I want you to make that available to the  
15 public. So, would you bring it in as a -- I'll put it in as a  
16 second ALJ Exhibit if you won't put it in.

17 You don't have to do it right now. It's a housekeeping  
18 thing.

19 MR. SCHMIDT: Okay.

20 JUDGE SIPPEL: It's a question of whether or not the  
21 whole -- I don't think it's necessary to put the whole study in.  
22 I think just that portion that you referred to.

23 MR. SCHMIDT: We're fine with that, Your Honor.

24 JUDGE SIPPEL: Okay. All right. Come back today or  
25 tomorrow with a set that's set up to give to the reporter. I'll

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1 figure out how we want to do it.

2 MR. SCHMIDT: Okay.

3 JUDGE SIPPEL: Listen, it's 20 after 12:00.

4 MR. COHEN: Your Honor, I'm happy to take five minutes.  
5 I'm happy just to do it.

6 Well probably go a bit based on this timing.

7 JUDGE SIPPEL: Well, you got to do that. Do you want  
8 five minutes? That's all?

9 MR. COHEN: Ten minutes.

10 JUDGE SIPPEL: Ten minutes it is. There's no such thing  
11 as a five minute break. We're coming back at 12:30. It's 20 after  
12 12:00. We're in recess.

13 (Whereupon, the above-entitled matter went off the  
14 record at 12:20 p.m. and resumed at 12:30 p.m.)

15 JUDGE SIPPEL: Mr. Cohen, you may proceed.

16 MR. COHEN: Yes. Your Honor, may it please the presiding  
17 judge, obviously I represent Cablevision. You know, what was  
18 really astonishing about GSN's very articulate opening was that in  
19 this book of 31 slides, or 30 slides with a couple of extra slides,  
20 there was one summary slide which purported to summarize the  
21 voluminous evidence in this case that these networks have similarly  
22 situated.

23 And that's not an accident, because while Mr. Schmidt has  
24 repeatedly talked about Section 616, as Your Honor knows, if the  
25 networks are not similarly situated, we can discriminate. What 616



1 provides, and that's why all of these trials have focused on the  
2 similarity between the networks, what 616 provides is that you  
3 cannot discriminate on the basis of affiliation with respect to  
4 affiliated networks, and even then, only if you don't have cogent  
5 business reasons for doing so.

6 So what I want to do, Your Honor, is expand a view of the  
7 evidence and spend some time on the evidence that Mr. Schmidt  
8 didn't spend any time on, and that's the evidence of, is GSN  
9 similarly situated to WE and Wedding Central, two programming  
10 networks that are clearly women's networks?

11 Now nothing you heard during GSN's opening can change the  
12 fact that the decision to re-tier GSN, and I'm going to be very  
13 specific about the timing, had nothing to do with WE or Wedding  
14 Central. All those conversations were after, and I'll take you  
15 through it in a little bit.

16 But in the first instance, the question is, is it  
17 similarly situated? Your Honor, the first demonstrative, the only  
18 board I'm going to use is from Cablevision Exhibit 50, and this is  
19 a presentation that GSN made to Comcast, the largest cable operator  
20 in the country, in 2009. And what they said in this presentation,  
21 it's behind Tab 22, Your Honor, if you want to look at it.

22 JUDGE SIPPEL: In yours?

23 MR. COHEN: In mine it's behind Tab 22. I thought it  
24 might be hard to see so I put it in the last tab.

25 JUDGE SIPPEL: Oh, I got it. Okay.

1 MR. COHEN: And what this presentation says, and it's the  
2 truth, is that Game Show, GSN, told advertisers, distributors,  
3 viewers, the public that they were a game show network. GSN's  
4 unique position.

5 And then in this presentation to Comcast, they divided  
6 the cable world up into genres: general entertainment, games, news  
7 and entertainment, music and sports, and women's entertainment.  
8 And they put in their own presentation to Comcast in 2009 that  
9 there were four women's entertainment networks -- Lifetime,  
10 SOAPnet, Oxygen, and most importantly WE. And they said in this  
11 presentation, we're not like those women's networks. We have a  
12 unique position. We are a game show network. We are in the games  
13 genre.

14 And although they'll try to demonstrate through the  
15 trial, Your Honor, that in fact they had programming that was  
16 similar to women's networks, such as WE and SOAPnet and Lifetime  
17 and Oxygen, the fact of the matter is they never strayed from their  
18 game show roots. This is a game show network. They built it that  
19 way. They market it that way. It was their competitive advantage.

20 And we won't show, Your Honor, one presentation, we'll  
21 show, Your Honor, presentation after presentation generated by GSN  
22 in the ordinary course of its business before this litigation was  
23 filed which emphasized its place as the only game show network on  
24 cable television.

25 It never once, and we will show, Your Honor, and

1 introduce, they're actually all in evidence already, dozens of  
2 presentations, and not once did GSN ever describe itself as a  
3 women's network that was similarly situated to WE.

4 And here's something that's not in dispute, one of the  
5 few things that's not in dispute. WE is a women's programming  
6 network. It was founded as the Women's Entertainment network, and  
7 GSN in this slide admits in a nutshell that it's not similarly  
8 situated.

9 Now let me take a step back --

10 JUDGE SIPPEL: Let me ask one question.

11 MR. COHEN: Yes, of course, Your Honor.

12 MEMBER SCHULTZ: The term "genre," is that, is genre the  
13 key, a key description or the key, not description but the key  
14 trigger word for whether something is similarly situated? In other  
15 words, do you have to have the same genre for GSN as you have a  
16 genre for WE TV?

17 MR. COHEN: I think it's indicative but not the only one.  
18 So here's what I'll say --

19 JUDGE SIPPEL: Only indicative. So when you use these  
20 words, I want to know what you're saying.

21 MR. COHEN: Yes. So, and of course you'll hear from Mr.  
22 Egan who of course, Your Honor, credited in the Wealth case. And  
23 what you will hear is the programming is different because it was  
24 in a different genre. The target audiences of the networks are  
25 different. The actual audiences of the network are different. The

1 advertising is different. The messaging is different. By every  
2 criterion that Your Honor has looked at in prior proceedings, these  
3 networks couldn't be less similarly situated.

4 Now before I go there, Your Honor, I just want to lay out  
5 what the burden is, because it is GSN's burden, and they've got to  
6 show that there was, either through direct evidence, that there was  
7 discrimination on the basis of affiliation or they have to show it  
8 circumstantially, but they have to show that the networks were  
9 similarly situated.

10 Now, I'm going to just go through the direct evidence,  
11 but here's the evidence. No witness is going to testify that the  
12 decision to re-tier GSN had anything to do with WE or Wedding  
13 Central. You won't see any document. There have been tens of  
14 thousands of documents presented in this case. You won't see a  
15 single document prior to the date on which the tiering decision was  
16 communicated to GSN. That's in December of 2010, early December in  
17 2010.

18 You won't find a single document in this record that  
19 suggests that the decision had anything at all to do with  
20 protecting any kind of affiliated network. What the evidence is  
21 going to show, and I'm going to go through it, and I'm going to  
22 deal with some of the testimony that Mr. Schmidt addressed with Mr.  
23 Bickham, is that Cablevision made a rational business judgment. It  
24 looked at the popularity of the networks, and it made a judgment  
25 that a network that was watched by only a few of its three million

1 subscribers was too expensive to carry and to force the lion's  
2 share of the three million subscribers to subsidize the viewing of  
3 the few who cared about it.

4 And there was a lot of discussion about why it went on  
5 the sports tier. Your Honor, it's easy why it went on the sports  
6 tier. There were only two options. Or three options. One was to  
7 keep it where it was, right, which it rejected. One was to drop  
8 the network altogether, which it rejected, or to reach the rational  
9 business decision for a network that was not overly popular but had  
10 some loyal viewers, that's why we got some complaints, we'll put it  
11 on a tier, the only tier they had, where people, for \$6.95 a month,  
12 who really cared about it could get it.

13 So all of this, you know, evidence we're going to hear  
14 about whether GSN is a sports network or is not a sports network,  
15 it's all beside the point. It was put on a tier so that the  
16 viewers who cared about it could get it.

17 Now I think I've already said, Your Honor, after I go  
18 through the direct evidence, I'm going to go through the  
19 circumstantial evidence, but what we're going to show is the  
20 programming was different. GSN showed game shows. WE did not have  
21 any. They promised different programming to their distribution  
22 partners.

23 Your Honor may recall from some of the prior proceedings,  
24 I'm going to show Your Honor a few, that the networks enter into  
25 carriage agreements. And those carriage agreements specify the

1 type of programming, contractually obligated programming that the  
2 networks are to have to deliver to those MSOs or else they lose  
3 carriage.

4 There's no similarity, as we'll see, between GSN and WE.  
5 They claim in this proceeding although hardly this morning that  
6 they targeted 25 to 54 year old viewers. They say that's why, it's  
7 one of the main reasons, before today, they said one of the main  
8 reasons that we're similar to WE, GSN is similar to WE, is because  
9 we target 25 to 54 year old viewers.

10 I'll show you the evidence, Your Honor, they did not.  
11 They did not target 25 to 54 year old women. They say they had a  
12 female skew. He showed you a chart that showed that there was a  
13 high percentage of women viewers. What I'm going to show Your  
14 Honor, and when we really go through the evidence and not through  
15 a chart, is that some of the evidence shows that the skew of this  
16 network is about 50/50. And the rest of the evidence shows that  
17 the reason they have a female skew by some measures is that -- I  
18 have to be careful because I fall into this group -- they attract  
19 55 and over viewers, so-called older viewers, and older viewers are  
20 outside of course the core demographic.

21 They say they were trying to attract 25 to 54 year old  
22 women. Who they actually attracted were 55 year old women and over  
23 but not 25 to 54, and 55 and over men. And then a small number of  
24 25 to 54 year old women were as the overwhelming bulk of WE  
25 viewership was in that core demographic of 25 to 54.

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1           And then finally, Your Honor, I'm going to spend a little  
2 time at the end of the opening just dealing with some of the  
3 economic issues that Mr. Schmidt raised at the end of his opening.  
4 I'm also going to talk a little bit about whether there was an  
5 unlawful restraint.

6           So let me turn to the direct discrimination claim.  
7 Here's what you're going to hear. We're going to put on Mr.  
8 Montemagno. I would call him more than a medium shot, the way he  
9 was referred to. He's a senior --

10           JUDGE SIPPEL: Is he going to go first?

11           MR. COHEN: He'll be our first witness, Your Honor.

12           JUDGE SIPPEL: Okay, go ahead.

13           MR. COHEN: Mr. Montemagno is now the head of programming  
14 for Cablevision. He was the number two person at that point in  
15 2010, although he had been with the company for over two decades.  
16 And he'll testify first about the environment that Cablevision  
17 found itself in.

18           At the end of Mr. Schmidt's opening he said all of this  
19 was pretextual; that there was a context as opposed to a pretext  
20 for this decision making. And the context was, and he referred to  
21 it, in 2010 cable operators like Cablevision were fighting bruising  
22 battles. We didn't kick Fox off the air. They took the signal  
23 away from us. They took the signal away from us because they  
24 wanted high retransmission consent fees that cable operators never  
25 pay. Cable networks, particularly big bundled cable network

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1 groups, were coming to cable operators like Cablevision and saying  
2 we want more and more and more fees.

3 And in the summer of 2010, Mr. Montemagno was asked by  
4 Mr. Bickham to consider, I agree with that line, and in July of  
5 2010, to consider the possibility of dropping GSN. And why did he  
6 do that? He did it in part because the network was out of  
7 contract.

8 And, Your Honor, I'll just say one thing about the  
9 statute of limitations. One of the things that they now complain  
10 about is that they were out of contract. Even when they were in  
11 contract they could be re-tiered by Cablevision. They signed a  
12 programming agreement in 1997 that said to Cablevision, you can put  
13 us on any tier that you want. And then in 2005 when the contract  
14 expired, Cablevision obviously retained that right.

15 So the essence of our statute of limitations argument, if  
16 Your Honor wants to take it up later, is to the extent they're  
17 complaining that we re-tiered them while we had contracts with  
18 affiliated networks that did not allow for re-tiering, that goes  
19 back to 1997. So I don't know how in the world a carriage  
20 complaint can be brought in 2011 complaining about the fact that  
21 there is differential treatment with respect to tiering.

22 So Bickham says to Montemagno, do an analysis. And if  
23 Your Honor turns to Tab 1, this is Mr. Montemagno's work product,  
24 Tab 1 in the book. It says "Game Show Network Carriage  
25 Considerations." Let me know when you're there, Your Honor.



1 JUDGE SIPPEL: I am.

2 MR. COHEN: Okay. And this is the document that Mr.  
3 Montemagno prepares for Mr. Bickham in the summer of 2010. And,  
4 Your Honor, far from showing that this was just some kind of  
5 arbitrary or pretextual act, this memorandum is a textbook exercise  
6 in how a cable operator should exercise its business judgment.

7 So if we just quickly, if we go through some of these  
8 headings. First, on the first page, it relates to the background,  
9 and it makes all of the contractual points that I just made, which  
10 is they were out of contract. You know, Cablevision can't  
11 willy-nilly take networks off the air that have binding contracts  
12 that prevent them from doing that, but there was no binding  
13 contract here. And then he reviews some of the economics.

14 And if you look at the next to the last bullet, and in  
15 the first section, we've agreed not to use numbers here, that's the  
16 number that they would have had to continue to pay in 2010 and  
17 forward if they stayed under the current, the deal that was then  
18 current.

19 JUDGE SIPPEL: So in the third bullet?

20 MR. COHEN: No, it's the fifth bullet, Your Honor, with  
21 the million --

22 JUDGE SIPPEL: Okay, I got it.

23 MR. COHEN: Okay.

24 JUDGE SIPPEL: I got it.

25 MR. COHEN: Then Mr. Montemagno reviews the programming,

1 and he goes through the programming. And what he correctly says is  
2 the programming on this network, and it was no different in 2010  
3 than it was in 2007 or 2005 or earlier, was principally game shows.  
4 There were reruns of old game shows. There were lots of new game  
5 shows, but they were game shows.

6 And then, Your Honor, and this is quite critical, it says  
7 "box polling data." And I'll have to spend a minute here  
8 particularly in light of Mr. Schmidt's opening.

9 JUDGE SIPPEL: Go ahead.

10 MR. COHEN: The box polling data was set-top box data  
11 that Cablevision got from its subscribers. So Your Honor of course  
12 is familiar with Nielsen, and they track viewing.

13 JUDGE SIPPEL: Right.

14 MR. COHEN: Beginning around this time cable operators  
15 did their own tracking, and they said, well, customers have a box.  
16 In this new digital world of cable, you can't just plug into cable;  
17 you have to have a box. And we can acquire information from that  
18 box about what people watch, and we can use it for all sorts of  
19 business purposes.

20 And the box polling data, which was taken from [REDACTED]  
21 Cablevision subscribers, it's not on here but there are [REDACTED]  
22 showed, and you see the ranking number, and I've agreed I won't put  
23 that into the record for now, the first bullet. That's where  
24 Cablevision ranked, where GSN ranked. Way down at the bottom of  
25 popularity.

1           Now what you heard today based on, really, some snippets  
2     from Mr. Bickham's testimony, and I urge you to read everything  
3     that's been designated which I heard today was that Mr. Bickham sat  
4     home in his pajamas and he watched a couple minutes a month of Game  
5     Show, and that's how he made the decision. He was asked at his  
6     deposition by Game Show's counsel if the polling data, his box data  
7     that showed the lack of popularity at the network made a difference  
8     to him.

9           And let me hand up to Your Honor Page 75. That's a page  
10    that you didn't receive from the other side. And these are  
11    questions -- I'm sorry, just pass these down. I'm sorry.

12           JUDGE SIPPEL: What tab was the other?

13           MR. COHEN: Well, there are a few tabs in his book, Your  
14    Honor, on Mr. Bickham's testimony, and I think the first one was  
15    fairly early on. Let me just find it quickly. Tab 6.

16           JUDGE SIPPEL: Tab 6, okay.

17           MR. COHEN: That's Page 76, right? Here's Page 75, the  
18    page before.

19           JUDGE SIPPEL: Okay. That's Page, let me just get to it.  
20    I've got Page 60. Page 76, I have it right here.

21           MR. COHEN: Here's Page 75, line 7. "Did you review or  
22    consider any survey data relating to GSN or GSN's viewership when  
23    you were making the decision about re-tiering the network?" "I  
24    looked at the polling data."

25           That's the box polling data that's in Mr. Montemagno's

1 memorandum that shows that the network was incredibly low-ranking  
2 among the networks that Cablevision carried. You know, and "What  
3 do you mean by the polling data, the set-top box data?" Answer,  
4 "Correct."

5 JUDGE SIPPEL: Meaning Nielsen?

6 MR. COHEN: And he looked at Nielsen. He received  
7 Nielsen information as well. So the notion based on some snippet  
8 from Mr. Bickham's testimony that he made this decision solely on  
9 the basis of watching a couple of shows, it's just belied by his  
10 own testimony.

11 And you'll hear from Mr. Montemagno, in detail, what he  
12 did, how he prepared his memorandum, this memorandum Tab 1 in your  
13 book, which showed that there were good faith business decisions  
14 made by Cablevision. It wasn't pretext.

15 JUDGE SIPPEL: But this says, "Did it affect your  
16 thinking at all?" It looks like "No."

17 MR. COHEN: Yes, it didn't affect his thinking because  
18 what he testified to is that it confirmed his judgment. The  
19 question, Your Honor -- Your Honor, you'll have to look at all the  
20 testimony.

21 JUDGE SIPPEL: I realize that.

22 MR. COHEN: You run into problems with snippets. I am  
23 content to rest on the entirety of Mr. Bickham's testimony. What  
24 you will see --

25 JUDGE SIPPEL: His deposition testimony?

1 MR. COHEN: Yes. What you will see, we don't control  
2 him. Mr. Bickham doesn't work for us, and he didn't work for us at  
3 the time of his deposition. He had left Cablevision before he was  
4 deposed.

5 What you will see from the entirety of the testimony is  
6 that Mr. Bickham said, this information confirmed what I thought.  
7 He's allowed to have an opinion of the programming. And by the  
8 way, he never testified, and you weren't shown these pages, that he  
9 did it because of WE or Wedding Central. He was asked direct  
10 questions as to whether this decision, based on polling data, based  
11 on his own watching, did it have anything to do with WE or Wedding  
12 Central? No.

13 Every single Cablevision witness who will testify, and  
14 you'll hear from Mr. Montemagno. You'll hear from, you'll read the  
15 deposition testimony of Mr. Bickham. You will not find a single  
16 person who testified, all right. 75, Your Honor, I've just shown  
17 something which is helpful, 75 line 18. That was the testimony I  
18 was looking for on the same page.

19 JUDGE SIPPEL: Yes, "Let me ask a broader question."

20 MR. COHEN: "Broader question." "It reinforced my  
21 inclinations." That's his testimony. Now, what do they say about  
22 the set-top box data? They say, well, you know, it wasn't  
23 reliable.

24 They're going to put on Mr. Brooks. He's got criticisms.  
25 They don't belong to some society that Mr. Brooks thinks they

1 should belong to. Is there really any dispute that this network  
2 wasn't popular on Cablevision? Turn to Tab 2.

3 JUDGE SIPPEL: Tab 2.

4 MR. COHEN: And this is a memorandum from Mr. Zaccario.  
5 You saw his picture.

6 JUDGE SIPPEL: I did.

7 MR. COHEN: He's the head of advertising for GSN. He's  
8 going to come and testify; we've deposed him. And it's to Cynthia  
9 Ponce, who is somewhere in the marketing or advertising chain at  
10 GSN, and it's the day after -- the day after the re-tiering takes  
11 place, February 2.

12 "Yesterday was the first day of the month. No memo, but  
13 we are off family." And I don't want to get into the family word  
14 there. Family is actually the broad tier of carriage. Cablevision  
15 called it's broadest tier the "family" tier. So just think of that  
16 as what others have called "expanded basic" in other cases.

17 Then he says, "Often Nielsen data, the UVs, when a  
18 re-tier happens only when there's a full drop, even then it can  
19 take up to six months for the adjustments." So the first thing  
20 he's saying is it won't hit us for awhile. And then he says, and  
21 I've highlighted, "Also they are our lowest rated affiliate."  
22 There isn't any dispute.

23 I'm up at the top, Your Honor, this top email on Tab 2.

24 JUDGE SIPPEL: I hear you.

25 MR. COHEN: All right. "Also they are our lowest rated

1 affiliates."

2 JUDGE SIPPEL: We're off family, I see that.

3 MR. COHEN: So there is no dispute, Your Honor.

4 JUDGE SIPPEL: It's highlighted for me.

5 MR. COHEN: It's highlighted for you. That Cablevision  
6 thought that GSN didn't perform well with its customers, and GSN  
7 understood it. And this is a big shot, to use Mr. Schmidt's  
8 terminology. Mr. Zaccario was one of the senior executives at the  
9 company.

10 JUDGE SIPPEL: It was actually my terminology. Mr.  
11 Schmidt went along with it.

12 MR. COHEN: Okay. I should have given you the credit,  
13 Your Honor.

14 JUDGE SIPPEL: Well, no, it's not the credit. I don't  
15 want to get anybody in trouble, unnecessarily anyway.

16 MR. COHEN: So, Your Honor -- yes?

17 JUDGE SIPPEL: I'm still having trouble. Why, so it's  
18 got low -- okay. It's got low ratings. What are we going to do  
19 with it? It's costing us too much to keep it down here on broad  
20 penetration because we're paying all these licensing fees, so let's  
21 kick them upstairs  
22 and --

23 MR. COHEN: Go back to Exhibit 1, Your Honor. I think  
24 Mr. Montemagno lays it out. He says, in box polling data he says  
25 low ratings, right?

1 JUDGE SIPPEL: Yes.

2 MR. COHEN: He says at the very bottom among IO Family  
3 networks in the next bullet. And then, you know, and then he says  
4 --

5 JUDGE SIPPEL: Yes, very bottom.

6 MR. COHEN: Right. "The few viewers that watch appear to  
7 watch it with regularity," right? This is not in dispute. GSN  
8 touts the fact that it has loyal viewers, and we don't dispute  
9 that. It has a small number of loyal viewers. It made them a  
10 perfect target to put on a different tier. They're not going to  
11 attract a large number of the three million Cablevision  
12 subscribers.

13 There's a term called "reach," Your Honor. How many  
14 unique viewers does GSN reach? And what you'll see in GSN,  
15 document after document, is in big, bold letters, reach is a  
16 problem for us. That means we don't have a lot of viewers. The  
17 people who watch us watch us a lot, but we don't have a lot of  
18 viewers, so you put them on a tier where the people who watch them  
19 a lot can get it. And the rest of the folks, at a time where  
20 Cablevision is under crushing programming burdens, the rest of the  
21 folks don't have to subsidize it anymore. That's the essence of  
22 this carriage decision.

23 And you're not going to hear from Bickham, Broussard,  
24 Doree, Dolan. You won't find it in the Sapan transcript. There's  
25 no witness who's going to testify that when this decision was made



1 and communicated on December 3, 2010 to GSN that there had been a  
2 single discussion about doing it because of WE, because of Wedding  
3 Central. And frankly, Your Honor, it just wouldn't have made any  
4 sense. And I'll tell you why.

5 JUDGE SIPPEL: Well, before you tell me why --

6 MR. COHEN: Sure.

7 JUDGE SIPPEL: Then how come 27,000-plus people were  
8 complaining about this?

9 MR. COHEN: So what Mr. Montemagno will say is that  
10 they're older viewers, and they tend to complain.

11 JUDGE SIPPEL: Twenty-seven thousand of them?

12 MR. COHEN: Here's what he didn't show you. What  
13 happened the next week? Zero. There was a short flurry of  
14 complaints in less than a week, and it stopped. And what's  
15 happened in other carriage disputes is that entities, and Mr.  
16 Montemagno will testify about this, competitors like Verizon, so  
17 you can get Verizon FiOS in almost all of the DMA in the footprint  
18 of Cablevision, so you have a choice.

19 And when there's really popular programming that you have  
20 a programming dispute with, Verizon runs some ads. They run some  
21 ads, and they say if you want Fox, if you want this one, they had  
22 a big dispute with YES many years ago, the Yankees Network.

23 JUDGE SIPPEL: Yes, they did. Yes.

24 MR. COHEN: If you want YES, get rid of Cablevision and  
25 come to us. You're not going to see any of this advertising here.

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1 You're not going to see any giant press campaign to move people as  
2 a result of the re-tiering of GSN.

3 And, Your Honor, we could make a mistake. Let's just  
4 assume we made a mistake. Let's just assume, Mr. Montemagno said  
5 he wasn't really all that surprised, but let's just assume that we  
6 made a mistake. We underestimated the number of callers, which by  
7 the way dropped off the cliff. That doesn't make it  
8 discriminatory. We're supposed to exercise good faith business  
9 judgment.

10 You know, you're going to hear from all these economists.  
11 I'm going to talk about this later. And they run regressions and  
12 they try to predict subscriber churn. Even Dr. Singer doesn't  
13 think that Cablevision has to run a regression on subscriber churn  
14 to figure out what's going to happen.

15 They look at the polling data. They had previously moved  
16 the network. The network was once on what's called analog. You  
17 didn't need a box. And they went from analog to digital, so at one  
18 point they actually lost customers years back.

19 GSN did, on Cablevision, right, which is not part of this  
20 case. And they said, look, we know what happen when you re-tier  
21 this: you're going to get some complaints. They're old viewers;  
22 they complain. We can withstand the storm, and ultimately we think  
23 we will save more money by doing this. And by the way, if we can  
24 induce some other people to take this extra tier, we'll make a  
25 little bit of money, not lose a lot of customers and actually get

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1 some more subscribers to the sports and entertainment. And of  
2 course that's what happened. There are thousands of them. And  
3 that's the 7,000 number Your Honor was asking about.

4 JUDGE SIPPEL: Yes.

5 MR. COHEN: There were thousands of subscribers who  
6 signed up after GSN was re-tiered, so it was a rational business  
7 decision. You know, everything about the economists is Monday  
8 morning quarterbacking. And you sit there after the fact, then you  
9 say you should have run a regression. I'm looking at data that  
10 wasn't available to you. They didn't have the customer  
11 information. They didn't know how many people were going to churn.  
12 Yet you write down a considered memorandum. You look at the  
13 popularity. You look at your programming costs. This was budget  
14 time, and they were looking for places to cut, and you make a  
15 rational business decision. That's not discrimination.

16 JUDGE SIPPEL: Now --

17 MR. COHEN: What I was going to say before, Your Honor,  
18 I don't want to cut you off if you're --

19 JUDGE SIPPEL: No, no, no. You're doing -- I'm not --  
20 no, I'm listening to you.

21 MR. COHEN: Okay. Would it have made any sense, would it  
22 have made any sense to knock off GSN because you were trying to  
23 protect WE or Wedding Central?

24 There's no evidence in the record that that was part of  
25 the decision before the communication, but would it have made any

1 sense? It wouldn't.

2 And Mr. Schmidt talked about competitive sets and he said  
3 "Ah, WE," he showed you a document, one document from 2008 that  
4 said that GSN was in WE's competitive set.

5 Do you remember that document, Your Honor? It was Ms.  
6 Martin's slide from 2008.

7 JUDGE SIPPEL: Yes, I'm with you.

8 MR. COHEN: Turn, please, to tab 3. This is a --

9 JUDGE SIPPEL: I hope you're not giving me a test of my  
10 memory.

11 MR. COHEN: No, Your Honor. We'll show it all to you.

12 JUDGE SIPPEL: It's not bad.

13 MR. COHEN: I haven't seen any evidence that it is, Your  
14 Honor.

15 JUDGE SIPPEL: Okay. Yes.

16 MR. COHEN: And how we see the competition, [REDACTED],  
17 this is a brand book, it's an excerpt from WE from April of 2011.  
18 It's an assessment of where they are.

19 It's part of a very big deck about how the network is  
20 positioned and you know, the whole document will come into  
21 evidence, and there are dozens, and dozens, and dozens of slides.

22 Here is their competition: [REDACTED], a women's network,  
23 right in that box up on the chart. [REDACTED], a women's network,  
24 right in that box up on the chart, [REDACTED], not in their chart, [REDACTED]

[REDACTED] -- next page, Your Honor. I'm sorry, there are two pages to

1 this. [REDACTED]

2 JUDGE SIPPEL: Oh, yes, I see it.

3 MR. COHEN: -- [REDACTED]. Your Honor, we're going to  
4 show you that the document that Mr. Schmidt showed you is a one-off  
5 aberration.

6 Kim Martin testified about it. You can review her  
7 testimony by deposition. She said it had nothing to do with them  
8 being in the competitive set.

9 But not only do we have this document, every week, and  
10 Ms. Doree will put these into evidence, every week we tracked how  
11 its competitive set was doing, all right?

12 Every week, not once in one slide presentation. Every  
13 week a regularly generated report was prepared about how are we  
14 comparing against the competitive set?

15 JUDGE SIPPEL: Over what period of time?

16 MR. COHEN: Years, years.

17 JUDGE SIPPEL: Years?

18 MR. COHEN: Years.

19 JUDGE SIPPEL: And who's doing it, GSN or Cablevision is  
20 doing this?

21 MR. COHEN: WE.

22 JUDGE SIPPEL: Oh, WE is doing it.

23 MR. COHEN: WE is doing it.

24 JUDGE SIPPEL: Which is owned by -- Okay, I know.

25 MR. COHEN: Right, right. WE is doing it in the ordinary

1 course of business for years every week, just like GSN does it, and  
2 it's true that in those regular reports of GSN's, they put WE in  
3 their competitive set.

4 But in the competitive set of WE, GSN is not in there.

5 JUDGE SIPPEL: Yes.

6 MR. COHEN: And Your Honor will see by the end of the  
7 trial that it's true that Mr. Schmidt showed you one document and  
8 maybe he can find a second.

9 JUDGE SIPPEL: That was the one with DIRECTV? I think I  
10 -- I know just what it was.

11 MR. COHEN: It was that --

12 JUDGE SIPPEL: Yes, it was a run -- That's okay you don't  
13 have to get it to me.

14 MR. COHEN: No, well since we're here, Your Honor, let me  
15 do it.

16 JUDGE SIPPEL: I mean --

17 MR. COHEN: Tab 8 of Mr. Schmidt's bar.

18 JUDGE SIPPEL: Okay.

19 MR. COHEN: Right, okay.

20 JUDGE SIPPEL: Let me see it. Let me grab it then.

21 MR. COHEN: Yes, it's the second page that he focused on,  
22 Your Honor.

23 JUDGE SIPPEL: Okay. There should be another page to  
24 this.

25 MR. COHEN: I think it's the second page at tab --

1 JUDGE SIPPEL: That's what I thought.

2 MR. COHEN: My bad.

3 JUDGE SIPPEL: That's the one, that's the one.

4 MR. COHEN: Right.

5 JUDGE SIPPEL: Now you're saying that was a one-time  
6 deal?

7 MR. COHEN: Correct. And maybe a second deal, but I'll  
8 show you 50 documents and you'll hear the testimony. There was a  
9 regular ----

10 JUDGE SIPPEL: What are you attacking the credibility of  
11 that document or the reliability of it?

12 MR. COHEN: I am attacking -- I am telling you that there  
13 was a context for this document that related to the networks that  
14 had, if you look at that box, the largest year-to-year women two  
15 plus, it means all ages, growth among all cable networks.

16 That was a very specific slide created for a very  
17 specific purpose. I'm not saying it's not right.

18 JUDGE SIPPEL: But it was women, it was a woman's --  
19 you're saying it had to do with women's programming.

20 MR. COHEN: Your Honor, I am not denying that the  
21 document says what it says.

22 JUDGE SIPPEL: All right.

23 MR. COHEN: That's our document.

24 JUDGE SIPPEL: Go ahead.

25 MR. COHEN: What I am saying to you is that it's one

1 document out of sea of documents and if you really want to know  
2 what's going on on the competitive set, you got to look at the  
3 mountain of documents that are created in the ordinary course.

4 JUDGE SIPPEL: What year is this document?

5 MR. COHEN: 2008, Your Honor.

6 JUDGE SIPPEL: And you are saying it doesn't reappear  
7 again?

8 MR. COHEN: No.

9 JUDGE SIPPEL: Ever?

10 MR. COHEN: No.

11 JUDGE SIPPEL: Nothing like it?

12 MR. COHEN: There might be one other document, Your  
13 Honor. I'm not recalling every single document in the case.

14 JUDGE SIPPEL: No.

15 MR. COHEN: I think there's one more. But what I am  
16 saying to you is when nobody was thinking about this case, each of  
17 our networks track every week, every day, every month, how are we  
18 doing against the competition?

19 None of those documents generated by WE mention GSN.  
20 They didn't think of it, it wasn't on their radar screen.

21 Now there's another important fact that was not on his  
22 chart about what was happening around the time of the year, which  
23 makes it clear that there was no discrimination.

24 They say we were protecting WE and Wedding Central  
25 against competition from what they say is a women's network.

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1 Your Honor, if you go back to Tab 3 in the second page it  
2 says OWN, do you see that?

3 JUDGE SIPPEL: All right, I see OWN in the middle.

4 MR. COHEN: Okay, that's the Oprah Winfrey Network.

5 JUDGE SIPPEL: Right.

6 MR. COHEN: It's a women's network. When did Cablevision  
7 launch it? It launched it in January of 2011.

8 So if the goal ---- Mr. Montemagno will testify about it,  
9 if the goal was to somehow eliminate the women's competition, why  
10 would you pick a network that WE did not believe was a competitor,  
11 and why would you put on a network that was clearly a competitor?  
12 It doesn't make any sense.

13 Your Honor, what the evidence is going to show at the end  
14 of the day is that the decision was made on the merits. Now let me  
15 deal with what --

16 JUDGE SIPPEL: Now would you run that by me again?

17 MR. COHEN: Yes.

18 JUDGE SIPPEL: You're saying the decision to put Oprah's  
19 program --

20 MR. COHEN: Oprah's network, Oprah Winfrey Network, which  
21 is a women's network --

22 JUDGE SIPPEL: -- was in January 2011?

23 MR. COHEN: Correct.

24 JUDGE SIPPEL: And --

25 MR. COHEN: In between the time that they notified GSN --

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1 JUDGE SIPPEL: Yes.

2 MR. COHEN: -- that they were dropping the network and  
3 before the time that they retired them.

4 JUDGE SIPPEL: Obviously January comes before February.

5 MR. COHEN: Yes, Your Honor.

6 JUDGE SIPPEL: Okay, so let's go.

7 MR. COHEN: Okay. And what I'm saying is if the goal  
8 here was to predict -- to protect WE and Wedding Central against  
9 competition ---- just the theory of their case, which I don't think  
10 it was, why would you add another women's network?

11 Why would you add a network that became a direct  
12 competitor of WE's? And more importantly I would say, Your Honor,  
13 why would you pick on a network that was not part of WE's calculus  
14 of who its competition was?

15 And I think I'm going to show that quite clearly when we  
16 turn to the programming in the few minutes.

17 JUDGE SIPPEL: Well, okay. Well, I mean -- okay, I mean  
18 I can think of some -- no, never mind. Never mind. I mean nobody  
19 says no to Oprah.

20 MR. COHEN: I don't think it's fully distributed, Your  
21 Honor, some people say no to Oprah.

22 JUDGE SIPPEL: Well, Letterman couldn't do it.

23 MR. COHEN: She hasn't asked me any questions so I'm not  
24 in a position to answer.

25 JUDGE SIPPEL: Yes, that's okay. Well, I mean Oprah has

1 -- it could be, and I'm not saying it is, but Oprah sort of is in  
2 a different category than your regular programming, but I can't go  
3 beyond that.

4 I can speculate or even can imagine what stuff is going  
5 on behind the scenes, so I'm not going to say any more of it.

6 MR. COHEN: Right. And I don't think you are going to  
7 hear that speculation.

8 JUDGE SIPPEL: Okay.

9 MR. COHEN: But in any case, Your Honor, my fundamental  
10 point is --

11 JUDGE SIPPEL: Yes.

12 MR. COHEN: -- is you would not protect a network that WE  
13 did not think was in its competitive set. WE didn't, but you  
14 wouldn't. It wouldn't be sensible. You'd pick on one of the close  
15 competitors.

16 Now, Your Honor, I want to deal with what Mr. Schmidt  
17 said was the second evidence of discrimination.

18 JUDGE SIPPEL: Well, wait a minute. Are you saying you  
19 mean that you would put Oprah up on a sports channel, even consider  
20 doing that?

21 MR. COHEN: Well, Your Honor, there's no evidence that  
22 it was considered. I'm making a different point.

23 JUDGE SIPPEL: But Oprah is the -- let me go back again.

24 MR. COHEN: Yes.

25 JUDGE SIPPEL: Oprah is not a programming that

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1 Cablevision carries or is it?

2 MR. COHEN: It is.

3 JUDGE SIPPEL: It is, it carries it?

4 MR. COHEN: Yes.

5 JUDGE SIPPEL: Okay.

6 MR. COHEN: I'm --

7 JUDGE SIPPEL: Well, it's not going to put it up on its  
8 sports channel.

9 MR. COHEN: It wasn't carrying it all, Your Honor, at the  
10 time it made the decision.

11 JUDGE SIPPEL: But in January -- they carried it in  
12 January, is that right?

13 MR. COHEN: Yes, Your Honor.

14 JUDGE SIPPEL: Well, maybe that's when the programming  
15 came out. You know, she developed this programming and started out  
16 putting it on, maybe this is the time period.

17 MR. COHEN: Yes, I understand. It definitely is the time  
18 period, Your Honor. I'm really making a simple point and then I  
19 can move on.

20 JUDGE SIPPEL: What's the point?

21 MR. COHEN: The point I am making is if the reason why  
22 GSN was retiered, right, was to protect WE and Wedding Central, if  
23 that's what you were trying to accomplish you would accomplish it  
24 by retiering any one of these networks, not just OWN, any one of  
25 these networks that WE really views as its competitor, not a

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1 network that's not in the competitive set of WE.

2 And none of that happened, Your Honor. We're in a  
3 hypothetical --

4 JUDGE SIPPEL: Well, I understand your point, yes.

5 MR. COHEN: None of it happened.

6 JUDGE SIPPEL: Yes, okay. I understand your point.

7 MR. COHEN: Okay. So, Your Honor, so let me deal with  
8 this issue of these discussions between Cablevision and DIRECTV,  
9 which Mr. Schmidt has said today is a second evidence of  
10 discrimination, right.

11 This is a discussion of should there be a trade between  
12 Wedding Central carriage on DIRECTV in return for care in  
13 Cablevision broadly, right, that's the general subject matter. Do  
14 you recall that, Your Honor?

15 And here's what actually happened, all right. There is  
16 not going to be any testimony or document that shows that prior to  
17 communicating the decision to GSN that anybody on the Cablevision  
18 side or on the Rainbow side said, I've got a great idea.

19 Let's knock off GSN, or threaten to knock off GSN, that's  
20 his claim, and then we'll get DIRECTV on Wedding Central. They'll  
21 come to us and they'll try to make this trade. That's Mr.  
22 Schmidt's theory of this.

23 JUDGE SIPPEL: It would be nice if that happened though?

24 MR. COHEN: Right, but it didn't happen, Your Honor.

25 JUDGE SIPPEL: Okay, but it would be nice.

1 MR. COHEN: And what the evidence shows -- well, we  
2 wouldn't be here I guess, Your Honor, right?

3 JUDGE SIPPEL: Right.

4 MR. COHEN: Yes, maybe I'd be wearing a jacket somewhere.

5 JUDGE SIPPEL: Right.

6 MR. COHEN: And what actually happened here? What  
7 happened? Here is what didn't happen.

8 The decision is communicated on December 3, no document,  
9 no testimony, that there was any discussion between the Cablevision  
10 side and the Rainbow side about cooking up this great plan. None.

11 Every witness who was questioned, Mr. Montemagno, Mr.  
12 Bickham, Mr. Sapan, says it didn't happen. Cablevision did not  
13 consult with us in connection with their decision to retier GSN, we  
14 didn't ask them to do it and there is no document that shows it.  
15 So now they communicate the decision, right?

16 JUDGE SIPPEL: Who is they?

17 MR. COHEN: They is Cablevision communicates the decision  
18 to GSN --

19 JUDGE SIPPEL: Personally who pushed --

20 MR. COHEN: Tom Montemagno picked up the phone and called  
21 Mr. Gillespie, whose deposition testimony you have, and said, "We  
22 are retiering you in February. The notices are going out," all  
23 right.

24 And what happened? Does Mr. Goldhill, who is going to  
25 come here this afternoon, does Mr. Goldhill pick up the phone and

1 call Cablevision, it's his network.

2 No, he doesn't pick up the phone and call. He turns to  
3 Derek Chang from DIRECTV and he asked Mr. Chang to call. Why is  
4 that? Why would he do that?

5 Mr. Chang is on the Board, but he works at his own  
6 company. He's not in the programming business, he's a distributor  
7 who competes with Cablevision.

8 Turn to the next tab, Your Honor.

9 JUDGE SIPPEL: Well, there seems to be a heck of a lot of  
10 this interplay between programmers and --

11 MR. COHEN: Yes, there is.

12 JUDGE SIPPEL: -- distributors and all that kind of  
13 stuff.

14 MR. COHEN: Yes. Let me ask you turn to tab 6, Your  
15 Honor.

16 JUDGE SIPPEL: Yes.

17 MR. COHEN: Well, first -- right? Let me ask you turn to  
18 Tab 6. This is a memorandum, it's an email, on the top of it is  
19 July 12, 2010, so this is before any of this stuff happens, right?

20 JUDGE SIPPEL: Right.

21 MR. COHEN: Okay. And that's from Dale Hopkins, who is  
22 going to testify, to Mr. Gillespie. Mr. Gillespie was deposed. He  
23 had Ms. Hopkins job at that point as the head of distribution.

24 JUDGE SIPPEL: Oh, Gillespie was the head of  
25 distribution?

1 MR. COHEN: He was the head of distribution in 2010 or  
2 '11 and Ms. Hopkins comes in to replace him right about the time of  
3 the retiering.

4 She was previously a marketing executive. So she's going  
5 to come here to talk both about her marketing knowledge from the  
6 pre-period and then what she's done as a distribution person for  
7 GSN since then.

8 JUDGE SIPPEL: All right.

9 MR. COHEN: And here is this email from Mr. Gillespie to  
10 Mr. Goldhill, Monday, July 12, 2010.

11 "Dale mentioned that Kim Martin," -- so Dale Hopkins --

12 JUDGE SIPPEL: Right.

13 MR. COHEN: -- "President of WE, had a meeting recently  
14 with Mike White," ---- he's the head of DIRECTV, "seeking  
15 distribution for Wedding TV. Didn't sound like they got too far  
16 according to Dale, but we both thought it might be worth dusting  
17 off the idea we," ---- we GSN, "had last year involving an exchange  
18 of DTV, DIRECTV distribution for a GSN renewal at higher rates with  
19 Cablevision."

20 This idea of a trade that they say is evidence of  
21 discrimination, it originated on the GSN side. Now I'm not  
22 conceding that it would be discrimination, but they thought of it.

23 Now turn back, Your Honor, because we have testimony on  
24 this, to tab 5. Back one tab, Your Honor, if you would.

25 JUDGE SIPPEL: I'm going back one tab?



1 MR. COHEN: One tab to tab 5.

2 JUDGE SIPPEL: I'm on tab 5 now.

3 MR. COHEN: Okay. And this is a blowup of deposition  
4 testimony from Mr. Gillespie, which will come into evidence.

5 Question, "You had the idea, you, Mr. Gillespie, in  
6 connection with your negotiations with Cablevision, of seeing if  
7 DIRECTV would carry Wedding Central in return for Cablevision  
8 agreeing to a new carriage deal, correct?"

9 Answer, "This was my own idea." Question, "It was not  
10 an idea that was suggested to you by Cablevision, correct?"

11 Answer, "Correct."

12 Next page. "Did anyone at Cablevision suggest to you at  
13 any time that carrying Wedding Central on DIRECTV would lead  
14 Cablevision to enter into a new carriage deal with GSN?" Answer,  
15 "No."

16 Question, "It was your idea?" Answer, "Yes."

17 So here's what happened, Your Honor. They have DIRECTV  
18 call up Cablevision in December of 2010. For people who work in  
19 this business, the implication is obvious, all right. We want to  
20 do something with you.

21 So to now show some emails and say that this was all  
22 cooked up on the Cablevision side is not true. They had been  
23 thinking about it for more than a year.

24 They had been thinking about trying to work a trade and  
25 use Mr. Chang, he hadn't been willing to do it, and they called Mr.

1 Chang because when Mr. Chang calls, it sends a message to  
2 Cablevision.

3 He is DIRECTV. He knows that Wedding Central is not on  
4 DIRECTV. They started this and they began a discussion, which I do  
5 not concede is discrimination, but the idea that this was some  
6 great master plan of Cablevision, if you believe what GSN is  
7 saying, they are saying the whole thing is pretextual.

8 The whole think was an effort to get carriage for Wedding  
9 Central in a trade. That's not true, Your Honor. They had been  
10 thinking about it for two years and they placed the call and the  
11 discussions began and they didn't reach fruition and that doesn't  
12 constitute discrimination.

13 So let me turn to similarly situated, Your Honor, because  
14 we have heard so little --

15 JUDGE SIPPEL: Who broke off the discussions?

16 MR. COHEN: Who broke off the discussions, I would say --  
17 the testimony, I believe, Mr. Schmidt can correct me, is that Mr.  
18 Chang said on the 31st of January he communicated that DIRECTV  
19 would not be willing to do a deal.

20 MR. SCHMIDT: I don't mean to argue in his case, but it  
21 was clear to us that the only way we could do it was with Wedding  
22 Central and DIRECTV wasn't willing to do that.

23 MR. COHEN: Okay. We'll have a lot of testimony about  
24 this, but it's the end of January when those discussions ended with  
25 DIRECTV.

1 MR. SCHMIDT: Right.

2 MR. COHEN: Just a couple of days before the -- the day  
3 before the retiering.

4 So, Your Honor, I said at the beginning, we didn't really  
5 hear a lot about the networks being similarly situation and there  
6 is a reason.

7 What the evidence is going to show is the fundamental  
8 differences across all aspects of the network. We're going to show  
9 the differences in the lack of similarity through their own  
10 documents, by cross-examining their witnesses, through our  
11 witnesses, and we're going to show different programming, different  
12 representations, two cable operators about the programming was,  
13 different target audiences, different actual audiences, differences  
14 from an advertising perspective.

15 Everything that we looked at in all these prior cases,  
16 and Mr. Schmidt and I have had the luxury of both appearing before  
17 Your Honor in prior proceedings, all of those trials centered  
18 around similarly situated, because you don't get to first base.

19 If they are not similarly situated, you have struck out.  
20 You can discriminate against a non-similarly situated network. So  
21 it's not a surprise that there was one slide this morning.

22 So let's start with the programming, Your Honor, and  
23 let's --

24 JUDGE SIPPEL: Yes, but don't go back to Wealth TV. That  
25 was pretty much of an easy hit compared to this, right.

1 MR. COHEN: Your Honor, I don't think so, but, you know,  
2 a hit's a hit, Your Honor, okay. If you go four for four you're  
3 batting a thousand whether you've hit four out of the park or  
4 whether you've had four cheap shots.

5 JUDGE SIPPEL: Get a couple of walks you're all right.

6 MR. COHEN: Yes, right. So let's start with the  
7 programming. Here is what's not in dispute. Okay, again, one of  
8 the few things not in dispute.

9 WE was a women's programming network. It had programming  
10 about women, it had programming about topics of interest to women,  
11 it was aimed at this demographic, 25 to 54 and 18 to 49-year-old  
12 kind of younger women, and in a nutshell here it is.

13 If we look at tab 7 just as a representation of the way  
14 WE thought about itself, this is from that same brand book that the  
15 competitive set came from.

16 WE talks to women the way women talk to one another. And  
17 you are going to hear from Ms. Doree, who is the programming chief  
18 of WE, about what this network is and what a women's network is.

19 Now there is going to be --

20 JUDGE SIPPEL: What's his name again?

21 MR. COHEN: It's Elizabeth Doree.

22 JUDGE SIPPEL: Oh, yes.

23 MR. COHEN: D-O-R-E-E. She's actually on one of Mr.  
24 Schmidt's last slides. There's a picture of her, tab 29 or 30 in  
25 his --

1 JUDGE SIPPEL: Oh, sorry. And she's going to be your  
2 witness?

3 MR. COHEN: She's going to be our witness.

4 JUDGE SIPPEL: Now I've got Mr. Montemagno first and is  
5 Ms. Zaccario going to be second?

6 MR. COHEN: Ms. Zaccario is their witness, Your Honor.  
7 So just to go back --

8 JUDGE SIPPEL: Wait a minute. Okay, let me go back  
9 again.

10 MR. COHEN: Okay.

11 JUDGE SIPPEL: You're starting off with Mr. Montemagno?

12 MR. COHEN: After they present all of their five  
13 witnesses.

14 JUDGE SIPPEL: Right, yes.

15 MR. COHEN: Okay. It depends what day it is, Your Honor.  
16 I've got scheduling issues. In the ideal world, we would call our  
17 fact witnesses and then our experts.

18 There's so much -- but you gave me your order, I might as  
19 well give you ours. Mr. Poret, who is our survey expert, he has a  
20 trial in California on Wednesday. So we may have to stick him in  
21 early, but otherwise our plan is to the fact witnesses, starting  
22 with Mr. Montemagno --

23 JUDGE SIPPEL: Right.

24 MR. COHEN: -- and then we only have two others. We have  
25 Broussard and Doree, and it just may be a question of availability.

1 Broussard is a very short witness, but one or the other, we will  
2 give timely notice obviously to GSN before we know.

3 And when we are done with those three, we have four  
4 experts, Poret, who has scheduling problems, Mr. Orszag, our  
5 economist who you'll recall --

6 JUDGE SIPPEL: Right, I do.

7 MR. COHEN: -- he's got vacation, so we're trying to  
8 work with his scheduling problems, Mr. Egan, who you know.

9 JUDGE SIPPEL: Yes.

10 MR. COHEN: He appears to have fewer scheduling problems,  
11 but he's not without scheduling problems, and Mr. Blasius, who is  
12 our advertising expert who is generally available.

13 So as soon as we know when the GSN case will end, we'll  
14 be able to slot people in on days, you know, subject to the length  
15 of cross- examination.

16 But the general idea is to call the fact witnesses  
17 followed by the experts.

18 JUDGE SIPPEL: Okay, all right. Thank you. Thank you  
19 for doing that, all right. Okay, that gives me a heads up.

20 MR. COHEN: Okay. So let's talk about the maligned Mr.  
21 Egan. He did a comprehensive review of the programming on GSN and  
22 WE and you're going to hear about his -- you're going to hear his  
23 testimony and you're going to hear about his genre analysis, you'll  
24 recall that from the prior proceeding.

25 JUDGE SIPPEL: Oh, yes.

1 MR. COHEN: And he has reviewed 12 sample weeks of  
2 programming on each network. He's done an enormous amount of work.

3 But I would suggest to Your Honor if you want to get a  
4 glimpse of what the programming is just look at the schedule. And  
5 if you turn to Tab 8 it's a demonstrator for Mr. Egan's testimony  
6 and this is WE's programming in the middle of December of 2010.

7 Right the mix here, a week or so after the retiering  
8 decision is communicated, before they get retiered. I don't have  
9 to spend a lot of time on it now, but it's Golden Girls,  
10 Bridezilla, My Fair Wedding, Amazing Wedding Cakes, movies like  
11 Miss Congeniality and Where the Heart Is, that are appealing to  
12 women, you get the idea.

13 You don't have to be a huge programming expert to look at  
14 this schedule and understand you're talking about a women's  
15 network, right.

16 And you're going to hear lots of testimony from Ms. Duree  
17 about it. And most importantly, Your Honor, not one game show.  
18 Not a single one.

19 Now turn to tab 9, Your Honor.

20 JUDGE SIPPEL: What's the one down on the bottom, the  
21 brown?

22 MR. COHEN: John Edward Cross Country, it's a talk show,  
23 Your Honor.

24 JUDGE SIPPEL: It says game show.

25 MR. COHEN: No, no, no. It's just the legend. That's

1 his color.

2 If you turn the page, Your Honor, you're always one slide  
3 ahead, as Mr. Schmidt has observed, turn to tab 9.

4 JUDGE SIPPEL: That's the legend, okay.

5 MR. COHEN: Okay. Now you're going to see a lot of  
6 brown. This is Game Show's programming, all right. And what's  
7 their schedule --

8 JUDGE SIPPEL: Is that color picked for a particular  
9 reason?

10 MR. COHEN: You can pick any ---- oh, the brown color?  
11 I didn't choose the color.

12 JUDGE SIPPEL: You've got clean hands on this.

13 MR. COHEN: I like brown, Your Honor. Okay, brown is a  
14 color that I like.

15 JUDGE SIPPEL: It's not a bad color if it was tan maybe.

16 MR. COHEN: I don't know what color I would call this.  
17 We'll come up with a color before Mr. Egan testifies.  
18 Greenish-brown, taupe, I'm not sure what it is.

19 JUDGE SIPPEL: You've got to give that something like a  
20 taupe, that would be all right.

21 MR. COHEN: Taupe. Okay, we'll call it taupe.

22 JUDGE SIPPEL: Okay.

23 MR. COHEN: But, you know, it's chocked full of games  
24 morning to night, Match Game, Family Feud, The Newlywed Game, Deal  
25 or No Deal, 1 vs. 100, the Newlywed Game, Baggage, every single

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1 program, and do you know why he calls them game shows?

2 They have a host, there is a competition with  
3 contestants, there are winners and there are losers, and there are  
4 prizes, all right.

5 Except for on Saturday and Sunday night, now we'll talk  
6 more about that in a minute, when they were showing poker, which is  
7 not women's programming by any structure.

8 JUDGE SIPPEL: Is that the light blue?

9 MR. COHEN: The blue is poker, gaming.

10 JUDGE SIPPEL: Oh, I see.

11 MR. COHEN: High Stakes Poker.

12 JUDGE SIPPEL: Oh, yes.

13 MR. COHEN: Right?

14 JUDGE SIPPEL: Right, I see that.

15 MR. COHEN: There is -- it's game shows day and night.

16 And, Your Honor, I am not suggesting to you that these two slides  
17 in and of themselves are the be-all and end-all, but they're really  
18 probative, right.

19 I mean the issue is are these networks the same? Can you  
20 have two networks that are the same, when one is all about women  
21 and one is game shows? Your Honor, you can't, but we're going to  
22 reinforce it with lots of other evidence.

23 But you could make the decision based on this, although  
24 the Commission has instructed you to look at a broader array of  
25 criteria.

1 JUDGE SIPPEL: Okay. I'm not sure -- well, I'm going to  
2 hold off on that.

3 MR. COHEN: Yes, okay, Your Honor.

4 JUDGE SIPPEL: I'm not going to breathe yet.

5 MR. COHEN: I'll rephrase.

6 JUDGE SIPPEL: I'm going to wait.

7 MR. COHEN: Okay. Your Honor, let me -- remember I told  
8 you about how they contractually represent themselves to the  
9 networks?

10 If you would turn to tab 10, and these documents, the  
11 affiliation agreements are really top secret from the perspective  
12 I think of most of most of our -- all of our clients.

13 So what I've done in tab 10 is given you an excerpt from  
14 a WE tv programming agreement. There will be testimony from Mr.  
15 Broussard that puts this in context and it describes the  
16 programming that WE is obligated to give to its distributors, all  
17 right.

18 It's clearly about women. Now turn to tab 11, whenever  
19 you get a chance, Your Honor, I don't want to rush you.

20 JUDGE SIPPEL: I can do it.

21 MR. COHEN: And this is a service description, a content  
22 description from a GSN programming agreement, which is pretty  
23 typical. It's typical, not pretty typical.

24 JUDGE SIPPEL: What does this mean, execution copies?

25 MR. COHEN: Signed copies, Your Honor.

1 JUDGE SIPPEL: Of an agreement or --

2 MR. COHEN: Yes. These are pages from the actual  
3 agreements that the networks entered into with the cable operators  
4 for carriage.

5 JUDGE SIPPEL: Okay, got you.

6 MR. COHEN: It's the final agreement, it's the execution  
7 agreement.

8 JUDGE SIPPEL: I got you.

9 MR. COHEN: And you are not going to see in this  
10 description or in any description any reference to women's  
11 programming, women, or anything like what you see in the  
12 programming agreements of WE.

13 What the Game Show Network promises its distributors is  
14 that it's going to deliver programming about game shows and it  
15 delivers on that promise.

16 Now what do they say? They say, you know, it might be  
17 that we're game shows, but some of these game shows they say -- and  
18 if you remember Mr. Brooks' testimony, they're about relationships,  
19 not just game shows. They are relationship programming and, you  
20 know, that's kind of like what's on WE.

21 I don't agree with that, Your Honor, and we will contest  
22 that vigorously during the trial, but you can't look at a few  
23 cherry-picked shows.

24 What you have to do, and only Mr. Egan has done it, is  
25 you have to look at the entirety of their programming and while

1 Game Show can show you one or two shows at the end of 2010, early  
2 2011, when this decision was being made, they may have had one or  
3 two shows that appear to have been targeted at women.

4 Having one or two shows does not convert you into a  
5 women's programming network. Ninety percent of the programming was  
6 games and the programming was not generally ---- and we'll prove  
7 this right through the first witness, through Mr. Goldhill, the  
8 programming was generally not aimed at women.

9 Now Mr. Egan's work, Your Honor, is supported by Mr.  
10 Poret. Mr. Schmidt mentioned Mr. Poret. He's our survey expert,  
11 the one with trial commitments in California, and he did a survey,  
12 right?

13 Because one of the things that Mr. Schmidt mentioned  
14 about beta is people do surveys. The beta surveys, by the way, are  
15 commissioned -- and let me spend a second on this because you  
16 asked, Your Honor.

17 The beta surveys are commissioned by networks. You are  
18 not going to hear from a cable operator like Cablevision that it  
19 uses beta work in making their carriage decision.

20 Mr. Schmidt was very forthright and told you that the  
21 audience for that are the networks. They want to know what people  
22 think of their programming.

23 Mr. Montemagno will not tell you that beta is the way  
24 that an operator makes a decision about carriage, whether it's GSN  
25 or anybody else. There are lots of flaws in the beta studies that

1 will go through with Mr. Brooks.

2 But Mr. Poret did a survey. It was obviously for the  
3 purpose of this litigation. And Mr. Poret's survey, which I'm  
4 going to show you in tab 14, Your Honor.

5 What he did is -- he did a survey in both New York and  
6 across the country and he gave the folks in surveys pairs of  
7 network. And you get these little surveys that, you know, like go  
8 from one to five -- or one to ten, you know, least similar, most  
9 similar, in terms of programming, and it's pretty reliable, Your  
10 Honor.

11 Look at HBO and Cinemax. They're both film channels, pay  
12 film channels, right? That are actually owned by the same company,  
13 by Time Warner, 8.64. People get that the programming is similar.

14 Look at the next two down, [REDACTED] and WE. Remember  
15 [REDACTED] is one of the networks that's in WE's competitive set,  
16 that's in Cablevision Exhibit 50, the Board, a women's programming  
17 network. 7.59, people get that those networks are similar.

18 Now let's go down to the next to bottom, GSN and WE,  
19 1.35. A random scientific sample, Mr. Poret will defend his  
20 methodology. He has testified all over the country and had his  
21 work accepted.

22 A random sample of viewers chose that they don't perceive  
23 the programming as being similar. And why is that, Your Honor?  
24 Because WE -- I'm sorry, GSN is not a women's programming network.  
25 They are showing games day in and day out.

1           So now let me go on to their next point. They say well,  
2   you know what, we have the same target audience, 25 to 54-year-old  
3   women, and that shows that we're kind of similarly situated.

4           That's just not true. And we're going to show it through  
5   GSN's own documents. Would you look, please, Your Honor, at tab  
6   15.

7           JUDGE SIPPEL: I got it.

8           MR. COHEN: "GSN is home to the best game shows." This  
9   is part of the same deck that that chart is from. It's given to  
10   Comcast at the beginning of 2009.

11           "GSN is home to the best game shows. It delivers a  
12   loyal, broad-based audience. Game shows deliver the largest  
13   audience for broadcast networks and off family-friendly programming  
14   with wide audience appeal."

15           They never ever say that their target audience is women,  
16   and how do we know that wide audience appeal doesn't mean women?  
17   Because Mr. Gillespie, who no longer works for them, testified to  
18   it.

19           Would you turn to tab 16, Your Honor?

20           JUDGE SIPPEL: On what date is this?

21           MR. COHEN: 2009. I'll show Your Honor documents all  
22   through 2009, '10, and '11, that have that language.

23           JUDGE SIPPEL: All right. The next one is 16?

24           MR. COHEN: Sixteen. This is testimony from Mr.  
25   Gillespie's deposition when I am actually asking him about one of

1 these decks. What do you mean by wide audience appeal? And what  
2 does he say?

3 Question -- this is from Page 72 and 73 of his  
4 deposition, which I think is Joint Exhibit 4, Your Honor. "Did you  
5 market GSN to affiliates throughout your tenure as the only TV  
6 network devoted exclusively to games?"

7 "We marketed it as a broad-based, family-oriented service  
8 that appealed to an adult audience that also had ---- we believe  
9 had connection to an audience online we thought our distributors  
10 could take advantage of."

11 "What does a broad-based service mean?" "In my view --  
12 head of distribution -- "it means it is a television network that  
13 appeals to all different demographics, men and women, men and women  
14 of all ages."

15 That's what their distribution chief said about the  
16 target audience of this network. And you might see in the course  
17 of this trial, a couple of documents that show that a couple of  
18 shows were actually targeted to women 25 to 54, but that was not  
19 the overall target of this network.

20 Now what about actual audience data? Mr. Schmidt showed  
21 you a statistic that said that they were [REDACTED], if  
22 you recall that. Not really.

23 First of all, the WE side at the relevant time period as  
24 he showed [REDACTED], at the time of the retiering, and I  
25 think we agree with that.

1 JUDGE SIPPEL: I'm not going to answer your question yes  
2 or no.

3 MR. COHEN: Okay.

4 JUDGE SIPPEL: I mean come on.

5 MR. COHEN: So --

6 JUDGE SIPPEL: Go ahead.

7 MR. COHEN: Let me show you what GSN's own document  
8 showed, Your Honor. Tab 17.

9 JUDGE SIPPEL: Okay. 17 it is.

10 MR. COHEN: 17. This is a presentation that was made to  
11 the DISH Network in the summer of 2010. Summer of 2010.

12 It's not based on Nielsen data, it's based on something  
13 else called MRI data. And look at what it says. [REDACTED]

14 [REDACTED]  
15 And I think even Mr. Goldhill will tell you that most  
16 networks skew slightly female. [REDACTED]

17 [REDACTED]  
18 That's what they told DISH in the summer of 2010. Now  
19 what are they -- so he showed you Nielsen data. You know, maybe  
20 they're going to claim the Nielsen data as more reliable, but  
21 here's the question, Your Honor.

22 If you're really a women's network that's targeting  
23 women, why would you make a presentation -- and this is not the  
24 only one, we'll show, Your Honor, a half a dozen of these ---- why  
25 would you make a presentation to one of your largest distributors,



1 if you were a women's network targeting women's audience, saying  
2 your audience was [REDACTED]? It doesn't make any sense.

3 It doesn't make any sense, and you're not going to find  
4 a single WE presentation in the thousands of documents that ever  
5 has a split like this [REDACTED].

6 So what about the Nielsen data? You're going to hear  
7 about that from Mr. Brooks and others. What about the Nielsen data  
8 that they say shows that the audience is [REDACTED]?

9 Your Honor, would you turn to the next tab? That's tab  
10 18.

11 JUDGE SIPPEL: Tab 18.

12 MR. COHEN: And, Your Honor, it's a court order. I'll  
13 try to speed through in 15 minutes, if you'll indulge me?

14 JUDGE SIPPEL: Sure.

15 MR. COHEN: Okay.

16 JUDGE SIPPEL: I think you're punishing me for denying  
17 your summary decision.

18 MR. COHEN: No, no, no. I thought I was being punished  
19 this morning when Mr. Schmidt thought I was ----

20 JUDGE SIPPEL: Go ahead.

21 MR. COHEN: Don't think I'm punishing you, Your Honor.  
22 So this is a presentation that Nielsen put together for GSN.

23 And we'll spend some time on this with the witnesses, but  
24 I just want to focus you on one bar because it's pretty telling.

25 And look at 4Q, 10. That's when the decision was made.

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1 It's the third from the right. Are you with me, Your Honor?

2 JUDGE SIPPEL: I'm with you. Three to the right.

3 MR. COHEN: All right, 4Q, 10.

4 JUDGE SIPPEL: I got you.

5 MR. COHEN: Okay. So this is who makes up GSN's actual  
6 audience.

7 That big blue bar, [REDACTED]  
8 [REDACTED] those are women 55 and older. Those are not the women  
9 who watch WE. Those are not the women who are in the target  
10 audience.

11 So how did they do in this target audience? They say  
12 their whole point of the network, they say, is to target women 25  
13 to 54.

14 So let's look at the green bar. [REDACTED]. That's  
15 what that is. In Primetime on average. [REDACTED], women 25 to  
16 54.

17 What about men 25 to 54? That's orange. [REDACTED].

18 So in [REDACTED], I don't have a calculator, they're  
19 going to be within a few tenths.

20 In the supposed core demographic of 25 to 54 year old  
21 viewers that they say they overlap, they overlap with WE, their  
22 audience at the time of the decision, [REDACTED]. This network  
23 skews women because they have older women viewers who are not the  
24 target for WE, and they have lots of women viewers.

25 And the average age of the GSN audience is in the [REDACTED],

1 and the average age of the WE audience is in the [REDACTED]. And why is  
2 that important, Your Honor, because it matters to advertisers. All  
3 right.

4 Advertisers buy. That's what this 25 to 54 demographic  
5 is. And what it's telling you is if you want to reach a lot of  
6 woman 25 to 54, this is not your answer. GSN is not your answer.  
7 Your answer is WE.

8 So, Your Honor, just to move it along a little bit, I'm  
9 going to skip a slide or two. And programing is different, the  
10 target audience is different, the actual viewers are different.

11 The last thing, Your Honor, similarly situated, which is  
12 advertisers. And that's why I raised this with, Your Honor, today.  
13 It's tab 20. And we'll have other testimony.

14 This is the cluster information. These are satellite  
15 providers. This is from DIRECTV, their parent, same thing for  
16 DISH, telling purchasers of advertising, they sell hundreds and  
17 millions of dollars a year advertising, you want to buy women's  
18 networks, you don't get GSN. You get WE, but you don't get GSN.

19 And what Mr. Blasius will tell you when he testifies, and  
20 there's been some remarks about his credentials. Mr. Blasius spent  
21 years as media buyer. He's not an academic, he's not somebody who  
22 is, you know, a typical gun-for-hire expert.

23 He has spent years buying advertising, and what he's  
24 going to tell you is that these differences in age and  
25 demographics, they matter in the real world.

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1           And while Dr. Singer is going to provide you with all of  
2 this hypothetical stuff, his distance analysis, all right? His  
3 distance analysis to try to show you that advertisers would viewed  
4 WE and GSN as interchangeable, the only thing that's distant is  
5 distant from the real world.

6           In the real world, these demographic differences matter.  
7 And the fact that they're overlapping advertisers on the network,  
8 something they make a lot of, of course they're overlapping  
9 advertisers in the network.

10           Procter & Gamble and Kellogg's and the large advertisers,  
11 they advertise on 90 networks. So yes, they advertise on WE and  
12 they advertise on GSN and they advertise on ESPN and they advertise  
13 on Spike and they advertise all over the place. It doesn't show  
14 anything, Your Honor.

15           So on every single metric of similarity, these networks  
16 are dissimilar. And, Your Honor, that should end the case.

17           We don't have to talk about net benefits. I'm happy to  
18 talk about it. I'm going to talk about it briefly.

19           But the one thing that's clear, and Your Honor, mentioned  
20 it in the in limine ruling the other day, is if you're not  
21 similarly situated, none of this other stuff matters. It just  
22 doesn't matter.

23           But let me just spend a couple minutes. You know, and I  
24 said there is a little bit of Monday morning quarterbacking going  
25 on here, in which what they're claiming is that somehow regression

1 should have been run.

2 Mr. Orszag's going to testify to this at some length.  
3 You're going to hear a lot of expert testimony as, Your Honor,  
4 already knows.

5 JUDGE SIPPEL: You know, I don't think I've seen an in  
6 limine motion. Maybe the last time I saw one was when I had a New  
7 York lawyer in a case.

8 MR. COHEN: Was that me, Your Honor?

9 JUDGE SIPPEL: I don't know, do you use in limines around  
10 here?

11 MR. COHEN: We do use in limines.

12 JUDGE SIPPEL: That's a nice one. It's threshold.

13 MR. COHEN: You know, we have an office in D.C., Your  
14 Honor. Maybe I should relocate. I have relocated for the trial  
15 actually. Working out of -- I'm going to change my business card,  
16 but I'm working -- and I am a member of the bar in D.C.

17 JUDGE SIPPEL: Welcome.

18 MR. COHEN: Okay, so --

19 JUDGE SIPPEL: In limine.

20 MR. COHEN: In limine. Well, you do what you can.

21 JUDGE SIPPEL: It's nice. It's nice.

22 MR. COHEN: Okay. And so look, we've laid this all out  
23 for, Your Honor.

24 Mr. Orszag is going to testify. It's really very common  
25 sense. He's saying, you look at the benefits. Forget all the

1 rest, look at the benefits. One side or the other. And you say,  
2 what are the benefits? The benefits are obvious. You're going to  
3 save money. All right. You're going to save all of those license  
4 fees.

5 And if you're right -- all right? And if you're right,  
6 you're going to get some new subscribers on the sports tier. So  
7 two things on the plus side. All right. And he calculates it.

8 On the minus side, if you lose subscribers because you've  
9 retiered GSN, that's clearly a cost to Cablevision.

10 But, Your Honor, there isn't going to be any reliable  
11 testimony. Statistically reliable testimony, even if you want to  
12 consider it, from Dr. Singer, about this subscriber churn.

13 There's no doubt, Cablevision gains and loses customers  
14 all the time. They call it churn in the business. And everyday  
15 somebody gets mad at Cablevision, goes to FiOS and somebody gets  
16 mad at the FiOS and they go over to Cablevision. And you try to  
17 minimize customer churn.

18 But the burden on them is to show that the customer churn  
19 is solely attributable to the retiering of GSN. And Mr. Orszag has  
20 studied that question, he'll present a coherent econometric  
21 analysis and is going to show you that you cannot say with  
22 statistical certainty that customers left because of GSN.

23 And as I said, Your Honor, it is Monday morning  
24 quarterbacking, because none of these analyses are analyses that  
25 anybody could have used in the real world. You've just got to

1 apply your best judgement as a operator.

2 That's what Mr. Montemagno's memorandum is. That's what  
3 the set-top box data was.

4 We will deal, at the trial, with all of Dr. Singer's  
5 analyses. We think they're flawed. Even apart from everything we  
6 talked about in the in limine motion. We will deal with these  
7 issues about goodwill. We will deal with ---- about his  
8 assumptions about disconnecting. And we'll deal with his arguments  
9 that it would have been cheaper to retier WE than to retier GSN.

10 Now, Your Honor, was shown a slide by Mr. Schmidt, which  
11 was --

12 JUDGE SIPPEL: What a minute, you're saying it would have  
13 been cheaper to retier WE?

14 MR. COHEN: That's their allegation, Your Honor.

15 JUDGE SIPPEL: Oh, I --

16 MR. COHEN: All right. That's their allegation, not  
17 mine.

18 And Mr. Schmidt showed you a slide in his book, which I'm  
19 going to find for Your Honor, momentarily.

20 JUDGE SIPPEL: You know, when I first heard the term  
21 churn in communications, this context, I thought it was advertisers  
22 who were churning to get the commissions down.

23 MR. COHEN: No. Well, that may be another way.

24 JUDGE SIPPEL: That's a different kind of --

25 MR. COHEN: Different kind of churn. Tab 19 in the black

1 book.

2 JUDGE SIPPEL: Yes.

3 MR. COHEN: Mr. Schmidt's book, Your Honor.

4 JUDGE SIPPEL: Yes.

5 MR. COHEN: Tab 19 in the loose-leaf book that Mr.  
6 Schmidt gave you.

7 JUDGE SIPPEL: I got it. No, I don't have it.

8 MR. COHEN: Yes, I just want to show you his slide.

9 JUDGE SIPPEL: I don't have it.

10 MR. COHEN: Because he showed you this slide and you  
11 asked a question about it.

12 JUDGE SIPPEL: Well, it's getting late.

13 MR. COHEN: Yes, I'm almost done.

14 JUDGE SIPPEL: That's not your fault. I'm not being  
15 critical of you.

16 MR. COHEN: Tab 19.

17 JUDGE SIPPEL: Let's see.

18 MR. COHEN: It's cost of retiering.

19 JUDGE SIPPEL: Tab 19.

20 MR. COHEN: And you asked him, why would one retier the  
21 other? One, rather than the other, if it was more expensive.

22 JUDGE SIPPEL: I did say that, didn't I?

23 MR. COHEN: This tells you -- I think you said that, Your  
24 Honor.

25 JUDGE SIPPEL: I think I did. I did.



1 MR. COHEN: It only tells half the story, Your Honor.  
2 This is what you save in license fees, what are you going to lose  
3 if people leave? How many people are you going to move to the  
4 other tier, right?

5 It's a net test. So all this tells you is that the  
6 license fee for WE is higher than the license fee for GSN.

7 We don't -- yes. Those numbers are our accurate numbers  
8 of what's in the record. It doesn't tell you what's going to  
9 happen when you retier them.

10 So this analysis doesn't tell you anything. It's just  
11 the left side of the equation. You need the right side, and Mr.  
12 Orszag's going to provide the right side.

13 And when you're done with the testimony, Your Honor ----  
14 and you're going to hear a lot of testimony from Mr. Orszag and Dr.  
15 Singer, probably thoroughly considerable crosses and redirects of  
16 both, for better or for worse - -- you're not going to be able to  
17 conclude that the costs would have outweighed the benefits.

18 And again, Your Honor, I have to say it again, you only  
19 get there if they're similarly situated, and ask yourself why Mr.  
20 Schmidt had one slide out of 30 on that.

21 Last thing about harm, a lot of discussion about harm.  
22 The numbers are the numbers, some of them are right. Some of them  
23 are wrong, Your Honor, but I just want to show you tab 21.

24 I don't want anyone to think -- in the back of my book.  
25 I apologize, Your Honor.

1 JUDGE SIPPEL: Oh.

2 MR. COHEN: Back in the spiral book. I'm sorry. We're  
3 drowning in paperwork.

4 JUDGE SIPPEL: I'm going to lose track of who you're  
5 representing.

6 MR. COHEN: That's probably not a good sign. I'm really  
7 -- you're not helping me, Your Honor, in front of my client,  
8 telling me that at the end of an opening.

9 JUDGE SIPPEL: I mean we used to -- when I was a kid we  
10 did, you know, skins and shirts and things like that. You could  
11 tell who was who.

12 MR. COHEN: I went to shirts. I went to shirts.

13 MR. SCHMIDT: We are not doing skins.

14 JUDGE SIPPEL: You got a white shirt and a blue shirt.

15 MR. COHEN: I went to shirts. Mr. Schmidt's younger than  
16 I am. He can go skins.

17 So ---- I don't want there to be any indication that  
18 somehow this retiering decision crippled this network. You're  
19 going to hear words like devastating from Mr. Goldhill.

20 Here are the numbers. This is what's happened to this  
21 network from 2007 through 2013, out of their own documents.  
22 Year-on-year records of revenue. Year-on-year records of income.

23 We are not talking about some little cable network that's  
24 teetering on the brink as a result of this retiering decision.

25 So, Your Honor, it's five to 2:00, unless you have

1 questions, I'm happy to sit down. I think to summarize, they're  
2 not similarly situated. That ends the analysis, but we didn't  
3 discriminate on the basis of affiliation.

4 There's no evidence of it, they won't prove it. The  
5 expert evidence won't get them there and they won't be able to meet  
6 the last test.

7 JUDGE SIPPEL: So be it. I hear it. Now we go to lunch.  
8 I'm not being snide or quick on it. No, I'm just saying that, good  
9 job on both sides. Really.

10 I think we got a darn good idea, all of us up here at  
11 this end, as to what we're going to hear over the next two weeks,  
12 and I really am looking forward to it.

13 The first witness we're going to have, however, is Mr.  
14 Goldhill, is that right?

15 MR. SCHMIDT: Yes, Your Honor.

16 JUDGE SIPPEL: And he's -- does he have time to -- can he  
17 come back at 3:00?

18 MR. SCHMIDT: Yes he can, Your Honor.

19 JUDGE SIPPEL: Okay. Can you all make it at 3:00?

20 MR. SCHMIDT: Yes, Your Honor.

21 MR. COHEN: Yes.

22 JUDGE SIPPEL: I'm going to be here by 3:00, but I don't  
23 have that far to go. Okay. We'll recess until 3:00. Thank you  
24 very much.

25 MR. COHEN: Thank you.

1 (Whereupon, the above-entitled matter went off the record  
2 at 1:56 p.m. and resumed at 3:00 p.m.)

3 JUDGE SIPPEL: Let's go on the record. We're back in  
4 session. It's 3:00 by the clock in the back of the room, this  
5 clock also.

6 We've got our first witness, Mr. Goldhill for Game Show,  
7 correct?

8 MR. SCHMIDT: Yes. Yes, sir.

9 JUDGE SIPPEL: If you could please stand while I  
10 administer the oath?

11 Do you swear or affirm the testimony you're about to give  
12 will be the truth, the whole truth and nothing but the truth?

13 MR. GOLDHILL: I do swear.

14 JUDGE SIPPEL: Thank you very much. Please have a seat.  
15 Okay, Mr. Schmidt, you may proceed.

16 MR. SCHMIDT: Thank you, Your Honor.

17 May I pass up the binder to the witness?

18 JUDGE SIPPEL: Yes, you may. This doesn't change what  
19 you gave us in your --

20 MR. SCHMIDT: This is different. This is specific to  
21 Mr. Goldhill and my examination of Mr. Goldhill.

22 JUDGE SIPPEL: Well, we had testimony in these binders  
23 that were delivered to us earlier.

24 MR. SCHMIDT: Oh, that's his --

25 JUDGE SIPPEL: Same thing?

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1 MR. SCHMIDT: Yes.

2 JUDGE SIPPEL: Okay.

3 MR. SCHMIDT: Yes, with some documents that I intend to  
4 examine him about.

5 JUDGE SIPPEL: Okay.

6 WHEREUPON,

7 DAVID GOLDHILL

8 was called as a witness by Counsel for the Defendant and, having  
9 been first duly sworn, assumed the witness stand, was examined and  
10 testified as follows:

11 DIRECT EXAMINATION

12 BY MR. SCHMIDT:

13 Q Mr. Goldhill, could we start off by having you just state  
14 your name and title to the Judge?

15 A David Goldhill. I'm CEO of GSN.

16 Q How long have you held that position for, sir?

17 A Roughly eight years.

18 Q Since 2007?

19 A Since summer of 2007, that's correct.

20 Q As of today, sitting here right now, how many years of  
21 experience in the television industry do you have?

22 A It's a little over 20.

23 Q To the point of the Judge's question just a moment ago,  
24 have you prepared direct written testimony in this case that  
25 appears at Tab 1 of the binder that we've given you that I've

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1 marked as GSN Exhibit 297?

2 A I have.

3 MR. SCHMIDT: Your Honor, we would now move this direct  
4 testimony into evidence.

5 JUDGE SIPPEL: Any objection?

6 MR. COHEN: Yes, Your Honor. So, we, I think, provided  
7 Your Honor with marked testimony. We have a series of objections.

8 JUDGE SIPPEL: Same objections that you had before?

9 MR. COHEN: No, Your Honor.

10 JUDGE SIPPEL: So they're new ones?

11 MR. COHEN: Yes, they're new ones. The easiest -- let  
12 me get you a copy of the marked testimony, if I may.

13 JUDGE SIPPEL: That's easier?

14 MR. COHEN: Yes. Do we have that? He went to get them.

15 JUDGE SIPPEL: Oh, here it is right here. Go ahead.

16 MR. COHEN: Do you have it with colors? If you don't  
17 have it with colors, it'll be harder to follow.

18 JUDGE SIPPEL: No. I don't see any grounds for that.

19 MR. COHEN: Give me one second, Your Honor.

20 JUDGE SIPPEL: No, I've got it right here. I do have it  
21 here.

22 MR. COHEN: Okay. And so it'll just make it easier to  
23 follow along.

24 JUDGE SIPPEL: No, I've got exactly what you have. Mr.  
25 Schmidt, do you have that? I have exactly --

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1 MR. SCHMIDT: I don't have a copy of your color-coded  
2 one. If you have a copy, I'd appreciate it.

3 MR. COHEN: You're getting it, but I think you -- we'll  
4 get it for you.

5 Okay, Your Honor, we have --

6 JUDGE SIPPEL: Be sure the witness has in front of him  
7 what you're going to talk about.

8 MR. COHEN: Well, I'm going to talk about the paragraph  
9 numbers, Your Honor.

10 JUDGE SIPPEL: That's all right, go ahead.

11 MR. COHEN: Whenever -- it's coming into the room, Your  
12 Honor, I apologize.

13 MR. SCHMIDT: Your Honor, may I just say, if what we're  
14 going to do now is march through different paragraphs to which he  
15 objects in the direct testimony, what I'd propose is either when I  
16 ask Mr. Goldhill a question about that, the objection be made, or  
17 he does it on his cross-examination just so we don't have a whole  
18 sideshow here of going through paragraph by paragraph.

19 MR. COHEN: Look, Your Honor, I'm not trying to have a  
20 sideshow.

21 MR. SCHMIDT: Oh, I didn't mean -- Your Honor, just in  
22 terms of efficiency.

23 MR. COHEN: And I'm willing to do it any --

24 JUDGE SIPPEL: You're the straight man. I'm making  
25 jokes and you're the straight man.

1 MR. SCHMIDT: Good, Your Honor.

2 (Laughter.)

3 JUDGE SIPPEL: I'm going to go with you, Mr. Cohen. I'm  
4 going to do it the way you want to do it.

5 MR. COHEN: All right. So, Your Honor, we've made some  
6 objections that I'll withdraw in the interest of speed.

7 JUDGE SIPPEL: Okay.

8 MR. COHEN: But if we start in paragraph eight.

9 JUDGE SIPPEL: Paragraph eight, is it on page three?

10 MR. COHEN: Yes, Your Honor. And I'm withdrawing our  
11 objection for --

12 JUDGE SIPPEL: Starting with eight, before paragraph  
13 eight?

14 MR. COHEN: It's admissible as far as I'm concerned.

15 JUDGE SIPPEL: Okay.

16 MR. COHEN: In paragraph eight, again, Your Honor, this  
17 raises the issue that we've had, this is back to the tiering  
18 objection. They won't all be tiering objections, but these shows,  
19 such as Mind of a Man, It Take a Church, all came on the air in  
20 2012/2013.

21 JUDGE SIPPEL: Oh, okay.

22 MR. SCHMIDT: May I just say something very quickly on  
23 that, Your Honor?

24 JUDGE SIPPEL: Yes, you may.

25 MR. SCHMIDT: This is Mr. Cohen's opening binder. This



1 is Tab 3, which Your Honor saw, the same tab appears at Tab 7.  
2 This is what they cited to say who their competitive set was. This  
3 is dated July 2011, half a year after the tiering.

4 Tab 20 in this binder, which they cited to say that we're  
5 not part of the same competition group as WE tv, that's this  
6 document which is dated on its cover May 16, 2015. It's not clear  
7 to me if that's when it was printed from the Internet, but it cites  
8 data in there from 2014.

9 So, this idea that everything post-tiering is irrelevant  
10 is a one-sided rule they're looking for.

11 JUDGE SIPPEL: Well, do you have a response to that?

12 MR. COHEN: Yes, Your Honor. We're obviously not --  
13 we're not excluding post-tiering evidence with respect to their  
14 financial performance, their harm. So, the principal objection we  
15 have, as we've said to Your Honor, relates to programming and what  
16 inferences you can draw.

17 Now, consistent with Your Honor's ruling, if we don't  
18 want to -- if we want to see how the trial goes, I'm perfectly  
19 happy to move on and argue it and point it out to the witness on  
20 cross the timing of these various programs.

21 JUDGE SIPPEL: Well, how do you want to do it?

22 MR. COHEN: I would prefer a ruling.

23 JUDGE SIPPEL: Okay, you're going to get your ruling on  
24 each one. In other words, the witness is going to sit here while  
25 we go through this? Well, that's okay. I mean, I wonder how you

1 want to do it, though.

2 MR. SCHMIDT: We don't think that makes sense, Your  
3 Honor.

4 MR. COHEN: It is what we discussed.

5 RM. SCHMIDT: I didn't envision going through paragraph  
6 by paragraph.

7 JUDGE SIPPEL: I don't know how else you can do it.

8 MR. COHEN: This has been my experience of how you deal  
9 with written directs, Your Honor. I'm not trying to waste the  
10 witness's time, by all means. But, you know, we haven't had an  
11 opportunity before today.

12 JUDGE SIPPEL: You're trying to drive me crazy, but  
13 we're okay with the witness.

14 MR. COHEN: I'm trying to --- yes, I'm posing my  
15 objection on paragraph eight, Your Honor.

16 JUDGE SIPPEL: And that has to do with relevance or  
17 hearsay?

18 MR. COHEN: Relevance.

19 JUDGE SIPPEL: So, okay. So, we don't have to worry  
20 about it. We don't have to worry about hearsay.

21 MR. COHEN: On paragraph eight.

22 JUDGE SIPPEL: Paragraph eight?

23 MR. COHEN: And paragraph nine.

24 JUDGE SIPPEL: Paragraph nine? Okay. Let me see,  
25 female audience, okay. Do you have anything to say to that, Mr.

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1 Shields?

2 MR. SCHMIDT: It's Schmidt, Your Honor.

3 JUDGE SIPPEL: I'm sorry, Schmidt.

4 MR. SCHMIDT: That's okay. Just what I said before,  
5 Your Honor, which is they want to come in their open and cite  
6 documents that they say prove we're not their competitors that  
7 post-date.

8 Now they're objecting to documents that we want to put in  
9 that are consistent with what we had before that show that we  
10 compete for that same audience. It's not the same standard they're  
11 asking the Court to apply. It's relevant.

12 JUDGE SIPPEL: I'm going to overrule the objection.  
13 Let's try nine. Nine is what? Baggage, Beat the Chefs. You're  
14 worried about the date on this?

15 MR. COHEN: Yes, Your Honor.

16 JUDGE SIPPEL: Overruled.

17 MR. COHEN: Okay. Paragraph 13, Your Honor, if we could  
18 look at that quickly.

19 JUDGE SIPPEL: Right. Paragraph 13 is --

20 MR. COHEN: Mr. Gillespie.

21 JUDGE SIPPEL: Getting there, I'm getting there. Why  
22 don't I have -- oh, I've got it right here. Yes, I see that. So  
23 that's a hearsay objection?

24 MR. COHEN: Yes, Your Honor. Mr. Gillespie is their  
25 employee.

1 JUDGE SIPPEL: Not offered for the truth of the matter  
2 asserted, but to establish effect on here. Is that correct?  
3 Paragraph 13? Not the truth of the matter, but -- am I reading  
4 your mind properly?

5 MR. SCHMIDT: On our side?

6 JUDGE SIPPEL: Mr. Gillespie reported that Cablevision  
7 opposed the new agreement on terms consistent with the previous  
8 agreement to make clear that it would continue to carry GSN on the  
9 same terms set forth. And then the rest is -- I assume that we've  
10 got people in here that are not protected by the Protective Order,  
11 under the Protective Order? People who are not --

12 MR. SCHMIDT: Yes, Your Honor.

13 JUDGE SIPPEL: -- subject to the Protective Order?

14 MR. SCHMIDT: I think we're okay on this, Your Honor.

15 JUDGE SIPPEL: Okay.

16 MR. COHEN: I agree.

17 JUDGE SIPPEL: Where do we stand, we're going to let it  
18 in?

19 MR. SCHMIDT: Yes, Your Honor.

20 JUDGE SIPPEL: Okay. So, okay, overruled. Thirteen?

21 MR. COHEN: I'm going to move on, Your Honor, to 18, 19  
22 and 20, Your Honor. So, these are a series of --

23 JUDGE SIPPEL: Mr. Chang?

24 MR. COHEN: Mr. Chang. Mr. Chang gave deposition  
25 testimony. We had an opportunity to cross-examine him, we examined

1 him. They were present.

2 Whatever Mr. Chang had to say should have been in that  
3 deposition testimony or they should have called him. He was on  
4 their original witness list, they decided not to call him.

5 We can't get into all this Chang testimony in front of  
6 Mr. Goldhill. I can't cross-examine Mr. Chang about it. 18  
7 through 20, Your Honor.

8 MR. SCHMIDT: This is testimony I specifically do intend  
9 to ask Mr. Goldhill about. I think Your Honor will be able to see  
10 the foundation for it, the fact that this was part of a regular  
11 business dealings, it's linked up to documents that are business  
12 records, and it's really not disputed.

13 There's not a dispute. The indicia of reliability that  
14 would raise a hearsay question don't exist here.

15 JUDGE SIPPEL: Well, let me see if that is --

16 MR. SCHMIDT: A lot of it is --

17 JUDGE SIPPEL: -- I've got this one right.

18 MR. SCHMIDT: -- for the effect of --

19 JUDGE SIPPEL: This is 18 through 20 --

20 MR. SCHMIDT: Yes, Your Honor.

21 JUDGE SIPPEL: -- of GSN Exhibit 297? You know --

22 MR. COHEN: And if I could respond?

23 JUDGE SIPPEL: No, I'm not going to waste the time.  
24 That objection is sustained. I'm sustaining his proposed  
25 objection.

1 MR. COHEN: And I'm going to withdraw the rest of my  
2 objections, Your Honor, except for Paragraph 34.

3 MR. SCHMIDT: And, Your Honor, just before we go to 34,  
4 I do intend to ask Mr. Goldhill about communications he had with  
5 Mr. Chang. I'm not intending to run afoul of Your Honor's ruling  
6 in doing that, but --

7 JUDGE SIPPEL: Well, we'll just take them one at a time.

8 MR. SCHMIDT: Yeah, thank you.

9 MR. COHEN: Okay. And I'll withdraw all my objections  
10 until Paragraph 34, Your Honor, the hearsay objection.

11 JUDGE SIPPEL: The hearsay objection?

12 MR. COHEN: Yes. When representatives of AT&T, Charter,  
13 Comcast and Verizon mentioned during repositioning during the  
14 renewal negotiations.

15 JUDGE SIPPEL: Isn't that proof of harm?

16 MR. COHEN: It's still hearsay, Your Honor, if I can't  
17 cross-examine the witnesses, I don't know what they said.

18 MR. SCHMIDT: They're not being admitted for the truth,  
19 they're being admitted for the threat, the threat that this tiering  
20 will cause harm to them.

21 They're trying to set a double standard where we have to  
22 have specific proof of specific harm. But the way we get that,  
23 which is someone literally saying to us, hey, we're looking at  
24 this, we can't admit. That doesn't make sense.

25 JUDGE SIPPEL: So, whether it's true or not, the fact is

1 you want that evidence in as a state of mind?

2 MR. SCHMIDT: Yes.

3 JUDGE SIPPEL: Any objection to that?

4 MR. COHEN: Yes, Your Honor, because I have -- there's  
5 no evidence that these statements were made other than relaying  
6 hearsay.

7 I understand he's not offering for the truth, but I can't  
8 even cross-examine as to whether or not the statements were made.

9 If they wanted to prove this harm, they could have called  
10 representatives of some of these MSOs. So, I stand on the  
11 objection.

12 JUDGE SIPPEL: Well, I mean, the first sentence -- this  
13 is paragraph 34, right?

14 MR. COHEN: Yes, Your Honor.

15 JUDGE SIPPEL: The first one is, [REDACTED]

[REDACTED] --

17 MR. COHEN: I'm not pressing that fact.

18 JUDGE SIPPEL: So, that was okay?

19 MR. COHEN: Yes, Your Honor.

20 JUDGE SIPPEL: But the one that starts, which are aware  
21 of the repositioning and attempt to use it?

22 MR. COHEN: It's the sentence that begins with  
23 "representatives mentioning during the renewal negotiations" that  
24 we have an objection to.

25 MR. SCHMIDT: And our position, Your Honor, is simply --

1 JUDGE SIPPEL: Oh, I see. That's what's protected.

2 Go ahead, I'm sorry, your position is what?

3 MR. SCHMIDT: Our position is simply the natural  
4 question after our witness says, [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

5 [REDACTED] [REDACTED] is, well, why do you believe that? He  
6 believes that because he was told that.

7 Whether they were blustering, whether they were truthful,  
8 whether they were saying it for whatever reason, he was told that.  
9 He's going to be able to testify that he was told about that and  
10 he's going to be able to be cross-examined on the fact of him being  
11 told about that.

12 It explains his state of mind. It explains his  
13 understanding of the facts. And to say you've got to prove  
14 specific instances of harm, but we're going to object to the  
15 specific instances that were directly told to you by the people you  
16 deal with on hearsay grounds?

17 JUDGE SIPPEL: I'm going to overrule the objection.

18 MR. COHEN: And with those rulings, Your Honor, I have  
19 no objection as to the admission of Exhibit 297, consistent with  
20 Your Honor's ruling.

21 JUDGE SIPPEL: All right. Except for that one hearsay  
22 ruling, sustaining that one hearsay objection, be sure the witness  
23 doesn't trip over that.

24 (Whereupon, the above-referred to document was received  
25 into evidence as GSN Exhibit No. 297.)



1 MR. SCHMIDT: It's going to be clear when I ask him  
2 about that, Your Honor.

3 JUDGE SIPPEL: Thank you. You may proceed.

4 MR. SCHMIDT: Mr. Goldhill, tell us in a few words what  
5 GSN is.

6 THE WITNESS: So, GSN is a company that is in two  
7 businesses: the television business, through GSN, the network,  
8 which is a broadly distributed cable television network. And in  
9 the online games business, which we operate as a separate company  
10 that offers games through all online platforms.

11 BY MR. SCHMIDT:

12 Q I'm going to focus my question here on the television  
13 network. Does the television network, GSN, operate as an  
14 independent network?

15 A It does.

16 Q Okay. How do you reconcile that? We've heard talk  
17 already today about DIRECTV and DIRECTV having a part ownership  
18 share in GSN. How do you reconcile that and saying that it  
19 operates as an independent network?

20 A Well, DIRECTV's ownership of GSN was essentially  
21 inherited from the Liberty spinoff transaction for DIRECTV.

22 Candidly, I think DIRECTV said this publically, we were  
23 the five-year trading asset that made it a [REDACTED]  
24 and there was no --

25 MR. COHEN: Your Honor, I'm objecting. Move to strike

1 the hearsay.

2 MR. SCHMIDT: Your Honor.

3 JUDGE SIPPEL: Well, it's not hearsay if he knows it.

4 THE WITNESS: It's a public statement and I do know it,  
5 too.

6 MR. COHEN: But it's a public statement by people who  
7 are not here, Your Honor.

8 JUDGE SIPPEL: I'm going to let this in. I'm going to  
9 overrule. It's within the framework of what this man should know  
10 and he's obviously reliable on that particular point.

11 Go ahead, sir.

12 THE WITNESS: The DIRECT members of our Board and  
13 DIRECT's CEO both told me explicitly, while that they thought we  
14 had a great business, it was not their business. They were not  
15 interested in investing in the programming business. They were  
16 likely to sell GSN as soon as they were allowed to, and that we  
17 should not expect to be part of their operations in any strategic  
18 sense.

19 I think that's something understood by most of the  
20 affiliates we've dealt with, and DIRECT has been fairly consistent  
21 about that.

22 MR. SCHMIDT: Focusing on GSN, who is GSN's target  
23 audience?

24 THE WITNESS: GSN's target audience is women primarily  
25 25 to 54, secondarily, 18 to 49, and tertiarily, all ages.

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1 JUDGE SIPPEL: You had to give us an as-of date.

2 MR. SCHMIDT: You started at GSN in 2007?

3 THE WITNESS: 2007.

4 BY MR. SCHMIDT:

5 Q Okay. During your tenure at GSN through the present day,  
6 has the target audience you just described been GSN's target  
7 audience?

8 A So, with the exception of a single block of programming  
9 which was sold to the program manufacturer themselves, essentially  
10 an infomercial --

11 JUDGE SIPPEL: All right, well, back up, now. Let's  
12 start again. When you joined in 2007, what -- re-ask the question.

13 MR. SCHMIDT: What was your target audience?

14 THE WITNESS: So, forgive me, GSN's advertising target  
15 audience, our sales, have been women demos, the ones I mentioned,  
16 25-54m secondarily and tertiary, other female demos.

17 BY MR. SCHMIDT:

18 Q Is that true up until this date?

19 A It is.

20 Q Okay. Is GSN what we've already heard referred to as a  
21 women's network?

22 A It is a network whose programming and advertising sales  
23 are centered around female audiences.

24 Q Does that guide who you compete with?

25 A It certainly guides who we consider our competitive set,

1 which, for us, means who we measure our ratings and progress  
2 against. Also, the companies that, when we acquire programming, we  
3 are likely to acquire against, hire talent, bring in development  
4 projects, et cetera.

5 Q Who is your competitive set?

6 A It changes a bit over time as their objectives may  
7 change, but the core of it is those networks that, like ourselves,  
8 are very heavily skewed to women and sell their advertising  
9 entirely based on female -- almost entirely based on female  
10 numbers.

11 So, that would be Lifetime, Oxygen, WE, some points Food,  
12 at some points Bravo, at some points Hallmark. Networks like those  
13 where the skew is consistent and part of what their ad sales and  
14 programming target.

15 Q To go to the Judge's point, from the time you started  
16 through the present, has WE been part of your competitive set?

17 A I believe WE -- we actually look at the competitive set  
18 on a regular basis for comparison purposes. I don't believe WE has  
19 ever been excluded from the work that we did.

20 Q And is it true that you, yourselves as a competitor with  
21 WE, even though you focus on competition entertainment?

22 A We do have somewhat genres, although, obviously, over the  
23 years, they've blurred meaningfully, as is true of a lot of folks  
24 in the female-oriented programming.

25 JUDGE SIPPEL: Well, now, wait a minute. What do you

1 mean, similar to other people in the female programming?

2 THE WITNESS: So, all of us in the unscripted world do  
3 a lot of reality and a lot of reality competition. So, those  
4 definitions which might have been a little tighter a decade ago are  
5 blurred.

6 So, for example, all of our shows involve a game of some  
7 type, but we have a lot of reality-based games, games that are  
8 about people competing for dates or people competing based on  
9 skills. Those exist on a lot of the other networks.

10 We have a lot of relationship shows, but ours tend to be  
11 a little bit more game. However, game-based relationship shows  
12 exist on all those other --

13 JUDGE SIPPEL: What is a relationship show?

14 THE WITNESS: They're basically dating shows.

15 JUDGE SIPPEL: Dating shows?

16 THE WITNESS: Matching up couples.

17 JUDGE SIPPEL: Matching up?

18 THE WITNESS: Yes. We've done a lot of them, and I  
19 think pretty much everybody in that competitive set, with the  
20 exception of Food, has done meaningful numbers of those type of  
21 shows.

22 JUDGE SIPPEL: Matching up?

23 THE WITNESS: The couples. So, the Dating Game was a  
24 classic old one. We've done Newlywed Game. We've done Love  
25 Triangle. We've done It Takes a Church, where their shows are

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1 partially reality, partially relationship, partially games. And  
2 those are pretty consistent across women-oriented networks.

3 So, some of those stricter standards I think you asked me  
4 about have gotten.

5 MR. SCHMIDT: Is that how your programming overlaps  
6 thematically?

7 THE WITNESS: Well, the programming overlaps in the  
8 sense that you're aiming for the same audiences and some of the  
9 themes have been fairly consistent across networks. Reality,  
10 dating, relationship, craft-like skills tend to be the topics these  
11 shows revolve around.

12 BY MR. SCHMIDT:

13 Q When Wedding Central existed, was Wedding Central a  
14 competitor of GSN?

15 A We did think it was going to be a competitor, because, of  
16 course, all of their shows were relationship-based and it was a  
17 meaningful part of our original programming at the time.

18 MR. SCHMIDT: Okay. Let's look at some of these  
19 documents that are in your binder. Do you mind flipping to the  
20 second tab? I want to just give some specific examples of some of  
21 these points we've been talking about in terms of audience and  
22 programming.

23 Look with me, if you would, at the second document in  
24 here, GSN Exhibit 273. And I'd like to direct your attention to  
25 the email that appears on the second page half way down, September

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1 8, 2010, from Tina Curran.

2 JUDGE SIPPEL: I've got tabs on here, what tab are you  
3 on?

4 MR. SCHMIDT: Tab 2.

5 JUDGE SIPPEL: Number 2?

6 MR. SCHMIDT: I think Your Honor's in a separate binder  
7 than Mr. Goldhill's binder. I believe his binder, if I may  
8 approach, might be the one just to Your Honor's --

9 JUDGE SIPPEL: Oh, I see. Oh, yes, I'm sorry. I am in  
10 a different binder.

11 MR. SCHMIDT: I always thought the binders would make it  
12 easier but --

13 JUDGE SIPPEL: No, they do. They do. They do.

14 MR. SCHMIDT: So, it's Tab 2, Your Honor, and it's the  
15 second page of Tab 2.

16 JUDGE SIPPEL: That I don't have yet. I'll have it in  
17 a second as soon as I unstick them. Okay, I've got it now.

18 MR. SCHMIDT: So, if you look at the top page, you see  
19 half way down the page, there's an email from Tina Curran. Who is  
20 she?

21 THE WITNESS: Tina was a marketing executive.

22 JUDGE SIPPEL: Marketing executive at --

23 THE WITNESS: At GSN. She was in charge of promotion.

24 MR. SCHMIDT: Outside the company?

25 THE WITNESS: Essentially, partnerships to market our

1 shows.

2 BY MR. SCHMIDT:

3 Q Do you see in the second paragraph, I guess throughout  
4 this email, she discusses some of your shows, the Newlywed Game,  
5 which I think you mentioned a few moments ago, 1 vs 100. Do you  
6 see that?

7 A Yes.

8 Q And just to the point of the Judge's question, I'm just  
9 going to read what she says about the Newlywed Game: three married  
10 couples of wide-ranging backgrounds face off as they answer  
11 questions about their relationships, ranging from the first time  
12 they met to the details of their love lives. Do you see where I  
13 read that?

14 A Yes.

15 Q Is that what you were talking about when you were talking  
16 about relationship shows that are common across these women's  
17 networks?

18 A Yes. Yes, sir.

19 Q Do you see where she identifies the target audience for  
20 your shows?

21 A I do.

22 Q And it's women 25 to 54?

23 A Yes.

24 Q Is that representative of the target audience for the  
25 different shows your network carries?



1           A     So, almost all of the originals we did in this period  
2 explicitly had a women 25 to 54 target. There were a couple that  
3 had women 18 to 49 targets.

4           Q     Are there ever occasions where you're trying to get, say,  
5 women 25 to 54 and you end up getting more men?

6           A     Well, unfortunately, like most television networks and  
7 programming, we don't always get it right.

8                     There's one example I can think of we got it very wrong  
9 in terms of the skew. We did a show with Drew Carey called  
10 Improv-A-Ganza, which was an improv show. And based on his ratings  
11 in other places, we thought that would be a -- deliver a female  
12 audience. It wound up skewing heavily male, much to our surprise,  
13 but it was truly an outlier.

14          Q     And what did you do when you saw that it was skewing  
15 male?

16          A     Well, we cancelled the show after one season. And it's  
17 actually an example, because the ratings were fine, but we're  
18 unable to sell male demos. So, having significant -- and by demos,  
19 forgive me, I mean male demographic groups that advertisers -- we  
20 can't sell them, so the show itself had no value to us. We  
21 cancelled it after that first disappointing season.

22                     MR. COHEN:    Your Honor, may I interpose an objection?  
23 And I apologize to the witness, since this is the first witness and  
24 we're trying to get the rules of the road.

25                     JUDGE SIPPEL:   Yes, go ahead.

1 MR. COHEN: This is direct testimony. It's the first  
2 witness. That testimony is not in his written direct. So, I  
3 thought the purpose of having a written direct was to lay out the  
4 confines of the direct testimony.

5 JUDGE SIPPEL: This is not in his written direct?

6 MR. COHEN: No, Your Honor.

7 MR. SCHMIDT: If it's not in his direct, then I think  
8 we're going to be moving to strike some of Mr. Cohen's opening.  
9 There have been things that are said that are covered by the  
10 written direct but the literal words aren't in the written direct.

11 If they need to stick literally to the words of the  
12 written direct, it's going to be --

13 JUDGE SIPPEL: Well, now, I am being -- I am going very  
14 liberal on this about if the subject matter has been stated one way  
15 in the written direct, I don't -- I'll hear testimony in the  
16 witness's own words, because I can better assess things like  
17 demeanor and that kind of thing and how much they know about the  
18 subject matter. It also gives me more opportunity to ask questions  
19 myself.

20 But I don't want to get to the point where something --  
21 the subject matter is brand new that doesn't appear in the written  
22 testimony.

23 Is that what you're saying is happening?

24 MR. COHEN: Yes, Your Honor, I'm not trying to hold the  
25 witness to this document --

1 JUDGE SIPPEL: No, I'm --

2 MR. COHEN: -- to his exact words. So, but this last  
3 point, we cancelled the show because it skewed men and we were  
4 surprised. It is nowhere near the written direct.

5 If he wants to talk about other the things that he's  
6 talked about that are related, I think that's fine. But if they  
7 wanted to make an affirmative point that they had shows that  
8 accidentally skewed men, then they should have put it in the written  
9 direct and, you know, then we would have had it.

10 MR. SCHMIDT: The point that's in the written direct is  
11 that this is a female-oriented network and they focus on a female  
12 audience. This is simply one example that's consistent with his  
13 testimony of focusing on a female audience.

14 It's directly responsive to what was addressed in the  
15 opening argument. It flows from his testimony that there are  
16 female-oriented audiences. He just said if they have a show that  
17 turns out to be male-oriented, they can't do anything with it.  
18 It's directly supportive of his written testimony of it being a  
19 female-oriented audience.

20 JUDGE SIPPEL: Granted, a lot of things were said in the  
21 opening statement which may not be included in the written  
22 testimony. So, we're off the opening statements into the evidence.

23 I'm going to sustain the objection, well, because, as I  
24 recollect that testimony about targeting women and what he said on  
25 the stand is targeting women, this aberration with men popping up

1 by accident was nowhere to be found, as I'm understanding it.

2 But I don't know what -- I mean, I don't know what  
3 difference it makes.

4 MR. SCHMIDT: It just reinforces --

5 JUDGE SIPPEL: No, I mean --

6 MR. SCHMIDT: -- it's not central, it just --

7 JUDGE SIPPEL: I don't why Mr. Cohen's so worried about  
8 it.

9 MR. COHEN: Well, I'm just trying to get some rules of  
10 the road, Your Honor, about direct.

11 JUDGE SIPPEL: Well --

12 MR. COHEN: I'll deal with them on cross.

13 JUDGE SIPPEL: No, no, you're making a good point, I'm  
14 trying to answer it.

15 MR. COHEN: Yes, Your Honor.

16 JUDGE SIPPEL: We haven't made the -- this is a  
17 different rule of the road and we make these up as we go as best we  
18 can. We'll see how it goes. Okay. But I am sustaining that  
19 objection.

20 MR. SCHMIDT: I suspect we'll be hearing more  
21 objections, Your Honor.

22 JUDGE SIPPEL: Oh, I have a strong suspicion.

23 MR. SCHMIDT: Were you successful in reaching female  
24 viewers?

25 THE WITNESS: We've grown the female audience for most

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1 years since I've been there. I think over the last three years,  
2 we're one of a handful of networks that's done so successfully.

3 It's a long process, obviously, that the network has  
4 meaningfully increased the amount and quality and clear targeting  
5 of its original programming for my eight years.

6 But, you know, clearly we've had some successes measured  
7 by the numbers.

8 MR. SCHMIDT: Okay.

9 JUDGE SIPPEL: Well, you know now, you've got to be  
10 careful with this witness because he took the bit in his mouth and  
11 he went a long way with it.

12 And it doesn't help -- he has to answer specifically as  
13 a specific question. That sounded like, you know, a trade union  
14 speech. And I'm not criticizing, sir, I'm not critical at all, but  
15 we've got to narrow this. I don't want to hear these expositions  
16 in a general way. I want to hear specifics.

17 MR. SCHMIDT: Let me go to some specifics. Could you  
18 look at Tab 3 of your binder, Mr. Goldhill? And can you tell us  
19 what this document is just in short form?

20 THE WITNESS: This looks like a sales document talking  
21 about the network's progress to one of our more important  
22 affiliates, Cox Communication, part of the regular meeting.

23 BY MR. SCHMIDT:

24 Q Look with me, if you would, if you look in the bottom  
25 right hand corner of the document, there are numbers, Bates

1 numbers, consecutive Bates numbers. Look at the one that ends 066,  
2 please.

3 A Okay.

4 Q It says "GSN Audience Up, Competitors Flat to Down."  
5 What does this say with respect to, if anything, with respect to  
6 growth among female viewers?

7 A This shows very substantial growth compared to our  
8 competitive set over that period of time.

9 Q Is WE tv specifically identified as part of that  
10 competitive set in this document?

11 A WE, I believe, is actually the first network listed as a  
12 competitor.

13 Q And just to be clear, where is your biggest growth in  
14 terms of demographics according to this data?

15 A According to this data, it would be women 18-plus, women  
16 2-plus, basically, that's women of -- 2-plus is women of all ages.

17 Q Do you see that the source of this data, the time period  
18 covered by the source?

19 A This is Nielsen data.

20 Q And what time period was the Nielsen data run?

21 A Fourth quarter of '07 through fourth quarter '10.

22 Q Okay. So, 2007 to 2010, that's when you had this growth  
23 in female viewers relative to your competitive set?

24 A Yes, sir.

25 MR. SCHMIDT: Let's flip --

1 JUDGE SIPPEL: The competitive set does not -- is it  
2 identified someplace else? This does not identify -- it must be --

3 MR. SCHMIDT: It's in the footer, Your Honor.

4 JUDGE SIPPEL: It's in the what?

5 MR. SCHMIDT: It's in the footer right here, competitive  
6 set.

7 JUDGE SIPPEL: I've got you.

8 MR. SCHMIDT: The first one is WE.

9 JUDGE SIPPEL: Oh, I've got you. Okay.

10 MR. SCHMIDT: And just to that point, Mr. Goldhill,  
11 could you flip two pages ahead to the page numbered 64? I'm sorry,  
12 I spoke wrongly, two pages back to the page numbered 64.

13 Do you see where it says GSN produces significantly more  
14 original programming than may competitors?

15 THE WITNESS: Yes.

16 BY MR. SCHMIDT:

17 Q Does that also identify WE tv as one of your competitors?

18 A Yes, sir.

19 Q Is that part of how you build your network, having more  
20 original programming?

21 A At the time, volume of original programming was one of  
22 our selling points.

23 Q Okay. Let's talk about competition for advertisers, if  
24 we could. That's a way in which you compete with a network like  
25 WE?

1           A       Yes, sir.

2                   MR. SCHMIDT:     Look with me, if you would, at tab 4 in  
3 your binder.    Could you tell us what this document is that's been  
4 marked Exhibit 166?   And I think this is the only one I'm using  
5 that you guys have objected to.

6                   MR. COHEN:     Right.

7                   JUDGE SIPPEL:   Where are you now?

8                   MR. SCHMIDT:   I'm on Tab 4, Exhibit 166.

9                   JUDGE SIPPEL:   But I want to ask the question on this  
10 previous exhibit.

11                   So, you're not concerned with the genre, the female genre  
12 when you testified to these statistics?   There are just cold, harsh  
13 statistics based on who you compare to those companies that you set  
14 out as your competitors, is that correct?   You're not interested in  
15 genre?

16                   THE WITNESS:   Yes, sir.

17                   JUDGE SIPPEL:   Yes, you are or no you're not?

18                   THE WITNESS:   I'm sorry, so this would be a presentation  
19 to Cox, one of our affiliates.

20                   JUDGE SIPPEL:   Yes.

21                   THE WITNESS:   And, we would view this as the competitors  
22 that they would evaluate us against.   So, that is why these charts  
23 show them as the competitor.   Maybe I'm not understanding your  
24 question, Your Honor.

25                   JUDGE SIPPEL:   You're not.



1 THE WITNESS: I'm sorry.

2 JUDGE SIPPEL: I'm asking, are you trying to sell Cox on  
3 the success of your numbers or on the fact that you are a female  
4 targets program that can get these numbers?

5 THE WITNESS: So, in meetings like this, we would be  
6 selling Cox on the success of the network, how well we've done. We  
7 basically try to --

8 JUDGE SIPPEL: That's numbers?

9 THE WITNESS: It's a variety of things, numbers are the  
10 most important, but there are other things that matter to them as  
11 well such as spending your money on original programming because  
12 they pay us fees.

13 JUDGE SIPPEL: Okay.

14 THE WITNESS: So, it's basically that the network is  
15 doing well compared to who we see and we expect you see as our  
16 competitors. That's all this presentation would be saying here.

17 MR. SCHMIDT: So, I have -- we move ahead to  
18 advertisers. Could you tell us what Exhibit 166 is, the document  
19 that appears, GSN Exhibit 166 behind tab 4?

20 THE WITNESS: Yes, so these are documents we typically  
21 prepare for advertisers and their agencies describing the network  
22 and then opportunities on the network to advertise on as far as  
23 specific promotions, specific shows, that kind of thing.

24 BY MR. SCHMIDT:

25 Q This is how you describe yourself to advertisers?

1           A       This is how we describe ourselves to advertisers, yes,  
2       sir.

3           Q       Okay.     Let's look at the second bullet under this  
4       document under GSN TV which is near the 40 million total viewers  
5       per month with an average audience that skews 70 percent female?

6           A       Yes.

7           Q       Is that consistent with how you presented yourself to  
8       advertisers as an audience that skews female in that direction?

9           A       All the time I have been there, yes, sir.

10          Q       Okay.

11          A       To advertisers, yes, sir.

12          Q       If you look further down, it says viewer.   We live to  
13       entertain and serve.     What's the primary group you identify  
14       yourself to advertisers as living to entertain and serve?

15          A       Women 25 to 54.

16          Q       So the Judge understands, do you sell to advertisers  
17       based on how many viewers in a specific demographic you deliver  
18       with your programming?

19          A       That's what are called general rate advertisers, yes,  
20       sir.

21                 MR. SCHMIDT:   Okay.   Let's take a look at a document on  
22       that.

23                 Before we do, Your Honor, we did have a timing objection  
24       to Exhibit 166.   I don't know if you're maintaining that you will  
25       move --

1 MR. COHEN: I maintaining. I think I know which way  
2 it's going, Your Honor, it's same thing. This is a 2012 document.

3 JUDGE SIPPEL: Overruled.

4 MR. SCHMIDT: We'll move it into evidence, Your Honor.

5 JUDGE SIPPEL: It's in.

6 (Whereupon, the above-referred to document was received  
7 into evidence as GSN Exhibit No. 166.)

8 MR. SCHMIDT: Exhibit 65, behind Tab 5, you see a cover  
9 email from Adilla Francis to you and some of your colleagues dated  
10 July 21, 2010 and then attached to that, she has a slide dec that  
11 says, 2010/2011 Up-Front Post Analysis.

12 Could you tell the Judge what this document is? What's  
13 an up-front analysis? What is this document talking about?

14 MR. COHEN: Your Honor, I'm going to object, again, if  
15 I may.

16 JUDGE SIPPEL: To what?

17 MR. COHEN: They have an advertising witness, Mr.  
18 Zaccario. So, in the written statement, there are lots of  
19 documents that are identified in the written statement.

20 The one -- at least one of the ones prior to this is not  
21 identified. I let it go because it's within the general knowledge,  
22 but the up-front analysis is the subject of Mr. Zaccario's  
23 testimony. He hasn't referred his testimony to up-fronts or this  
24 document.

25 JUDGE SIPPEL: Is Mr. Zaccario is the one that doesn't

1 refer to it?

2 MR. COHEN: No, Mr. Goldhill.

3 JUDGE SIPPEL: Oh, Mr. Goldhill?

4 MR. COHEN: There's no reference of Exhibit 65 in his  
5 testimony. There is no discussion of the up-fronts. They have a  
6 witness whose purpose is to talk about their advertising policy.  
7 He'll be here tomorrow.

8 JUDGE SIPPEL: Who is this woman, Adilla Francis?

9 THE WITNESS: She's our Office Manager in the New York  
10 office, which is where our ad sales business is concentrated.

11 JUDGE SIPPEL: Okay. Office Manager in New York. And  
12 --

13 MR. SCHMIDT: That's so you know the set up.

14 JUDGE SIPPEL: I'm sorry?

15 MR. SCHMIDT: That email is just to set up a meeting and  
16 saying here's the attachment for the meeting.

17 JUDGE SIPPEL: And this attachment is -- well, you said  
18 -- Mr. Cohen, you said you have problem with up-front analysis. Is  
19 that a category of --

20 MR. COHEN: Yes, Your Honor. So, an up-front, and the  
21 witness knows better than I do, the up-front is when they sell ads  
22 for an entire season to come on television. It's called the  
23 up-front.

24 Mr. Zaccario has testimony about it in his written  
25 direct. This is not a document that's been identified in Mr.

1 Goldhill's written direct. It's not a subject that's in his  
2 written direct other than to use the word marketing.

3 And I thought the purpose of these written directs, this  
4 is not new evidence and it's not for both, was to identify the  
5 documents the witnesses were going to testify about.

6 JUDGE SIPPEL: All right, let's hear from you.

7 MR. SCHMIDT: His testimony, his written direct, is  
8 about the networks being similarly situated. He was a recipient on  
9 this document. He has firsthand knowledge of how they held  
10 themselves out to advertisers.

11 We've already spent more time arguing about the document  
12 than I was planning to question him on it.

13 It's not a remarkable thing that the CEO of GSN with  
14 extensive written direct testimony about how the networks are  
15 similarly situated would be asked a question about how they hold  
16 themselves out to advertisers.

17 JUDGE SIPPEL: Okay. This is not the first time you've  
18 seen this document, Mr. Cohen, right, this has been --

19 MR. COHEN: Oh, no, Your Honor.

20 JUDGE SIPPEL: You've been well aware of the purpose of  
21 this document?

22 MR. COHEN: Yes, Your Honor.

23 JUDGE SIPPEL: I mean -- okay. I think it's within the  
24 broad -- as you have explained it, Mr. Shields --

25 MR. SCHMIDT: Schmidt, Your Honor, sorry.

1 JUDGE SIPPEL: I mean, he's going to be with me on that  
2 all week. I'm sorry.

3 MR. SCHMIDT: I'll pipe up every time, if that's okay.

4 JUDGE SIPPEL: Thank you. But it's within the purview.  
5 You've given it enough of an explanation and -- well, I'm  
6 overruling the objection.

7 MR. SCHMIDT: So, go back to the document, let's pick up  
8 where we were, Mr. Goldhill. Look at Tab 5, the up-front analysis.  
9 Tell the Judge, if you would, what an up-front analysis is.

10 THE WITNESS: So, at GSN, like almost all networks,  
11 almost all television networks, has an up-front in which we sell  
12 much of what's called the general rate, the guaranteed advertising,  
13 guaranteed based on delivery of an advertising demographic.

14 We sell much of it for the current season over a short  
15 period known as the up-front. And, again, not getting to us --

16 JUDGE SIPPEL: Is that measured in weeks, months?

17 THE WITNESS: So, we will sell lower end. We sell  
18 [REDACTED] of the units we have available for general rate to  
19 advertisers mostly through their agencies over a relatively short  
20 period of time in the spring and summer for the next broadcast year  
21 which starts in September.

22 And so, as I said, not unique to us, an absolute common  
23 practice in the business. This particular document we do almost  
24 every year. We certainly do it in some form every year, not  
25 exactly this document, in which the ads sales reports to myself and

1 the rest of the senior management to how well we did during the  
2 up-front sales.

3 So, this would be an internal analysis of how well the  
4 network did.

5 MR. SCHMIDT: Let's look at the third page of this  
6 document.

7 JUDGE SIPPEL: Thank you.

8 MR. SCHMIDT: Numbered page 3, the Bates number on the  
9 bottom is 184, it says '10, '11 up-front billing by demo. Do you  
10 see that?

11 THE WITNESS: Yes, sir.

12 BY MR. SCHMIDT:

13 Q What does this show with respect to your performance  
14 among your core female demographic?

15 A Well, this ranks the number of spots and the amount of  
16 revenue we got by each demographic we sold. And, as you'll see,  
17 [REDACTED] of the spots were sold based on a guarantee of the  
18 female 25 to 54, rating [REDACTED] female 18 to 49.

19 You'll see that almost all the demos sold here are  
20 females of one type or another. There is also P, which stands for  
21 persons. So, without getting too much in the weeds, but when we're  
22 able to price persons at a more attractive rate than women, and  
23 there are a few advertisers which we can, we sell persons.

24 As you can see, and I've said before, we sell no male  
25 demos. They're all female demos and I think, just looking at the

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1 numbers, and obviously, people can do the math, but it's somewhere  
2 between [REDACTED] of all the general rate we have sold in  
3 the up-front was to female demos, just based on female demos.

4 Q Just to be sure I understand something that you said in  
5 your answer, why aren't there any male demographics on here?

6 A We don't sell them and we don't sell them because we  
7 don't deliver enough to get paid enough for men to not instead for  
8 that same 30 second sell the women's number. Right? So, in any  
9 particular 30 second spot, there's X-number of women, Y-number of  
10 men. Y is so small that getting paid for them does not produce  
11 enough money for us relative in selling on the basis of the X  
12 number. And that's all you're seeing here.

13 MR. SCHMIDT: Okay. Let's talk about --

14 JUDGE SIPPEL: So, the --

15 MR. SCHMIDT: I'm sorry, sir.

16 JUDGE SIPPEL: Oh, that's okay. You actually -- is  
17 there a business decision to actually leave the men out of this or  
18 are you giving me this -- do they come to you and say, look, Mr.  
19 Goldhill, or whatever they call you --

20 THE WITNESS: I'd rather not answer that question.

21 JUDGE SIPPEL: We get pretty down and dirty here. Why  
22 can't -- you know, you said, why you can't you give me men's  
23 numbers or do they come to you and say, we're not giving you men  
24 numbers because of this, this, this and this or is this just  
25 something that's assumed?



1 THE WITNESS: May I give you a math example, sir? So,  
2 if we have 100 people watching and 708 are women and 30 are men,  
3 and the advertiser is looking for women saying, we'll pay you a  
4 dollar for every woman. That spot, we can sell for \$70.00 because  
5 we deliver 70 women.

6 JUDGE SIPPEL: I can do that math.

7 THE WITNESS: If they say, we'll deliver a dollar for  
8 every man, we can only sell that spot for \$30.00, we've just lost  
9 \$40.00 by selling men.

10 So, businesses such as ours that female oriented try to  
11 actually maximize the number of women we attract because those are  
12 the advertisers we talk to, those who want to buy women demos.

13 JUDGE SIPPEL: All right. Now, that's the flip side.  
14 You're talking to advertisers who want women targets.

15 THE WITNESS: Who are buying -- yes, sir. I'm sorry.

16 JUDGE SIPPEL: Because they're selling a product?

17 THE WITNESS: Correct.

18 JUDGE SIPPEL: That they might be interested in?

19 THE WITNESS: Yes.

20 JUDGE SIPPEL: Do we know who these purchasers of your  
21 advertising would be or are they --

22 THE WITNESS: We do, sir.

23 JUDGE SIPPEL: Who these advertisers would be?

24 THE WITNESS: We do, sir. Yes, we can --

25 JUDGE SIPPEL: Do you know that for sure? I mean do you

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1 know this is -- but this is not included in this?

2 THE WITNESS: It's not in this document, I don't believe  
3 so.

4 JUDGE SIPPEL: Yes.

5 THE WITNESS: I haven't looked in the whole document.  
6 But the entire television business for general rate advertising is  
7 based on advertisers who want to buy a specific demo. They want to  
8 buy --

9 JUDGE SIPPEL: Who are some of your bigger advertisers  
10 that want this product? That female?

11 THE WITNESS: So, heavily, the consumer product  
12 companies that are selling soaps or cosmetics or care. We have a  
13 good amount of pharmaceutical companies, medical device companies  
14 as well, some of whom buy women.

15 MR. SCHMIDT: Your Honor, can I help out on this? Page  
16 12 has --

17 THE WITNESS: Is there a list?

18 JUDGE SIPPEL: Well, I want to see What he can just tell  
19 me. I'm just trying to get a feel for this.

20 THE WITNESS: But, I should also mention, sir --

21 JUDGE SIPPEL: You're not going to the gun  
22 manufacturers?

23 THE WITNESS: We are not, sir. And they don't come to  
24 us.

25 JUDGE SIPPEL: And they don't come to you?

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1 THE WITNESS: Yes. And this is how all sort of  
2 television networks work. And I should mention, that some  
3 advertisers want to buy both women and men. So, a financial  
4 services company, for example, will have commercials that are  
5 oriented for women that they will buy on female oriented networks,  
6 commercials that are oriented for men that they'll buy on the  
7 ESPNs.

8 JUDGE SIPPEL: Do you know that women control more of  
9 the economic spending in this country than men do?

10 THE WITNESS: They certainly do in my home and --

11 JUDGE SIPPEL: Extrapolate from your home. No, I've  
12 seen it before. I've seen that before.

13 Now, are you -- okay. I had one other question, let me  
14 think. No, I've lost my thought. Go ahead, go ahead.

15 MR. SCHMIDT: Thank you.

16 BY MR. SCHMIDT:

17 Q Let's talk about the specific return that is at issue in  
18 this case. When you started at GSN, did GSN have a written  
19 contract with Cablevision?

20 A We did not.

21 Q Is that unusual in your dealings with cable companies,  
22 not to have a written contract?

23 A It was.

24 Q Were you concerned?

25 A Well, we usually prefer the security of a written

1 contract. In our experience, so do affiliates. I think we weren't  
2 very concerned.

3 Q Why is that?

4 A Well, because we had been out of contract since 2005, we  
5 had been carried consistently on Cablevision over that period and  
6 we had never heard, to my knowledge, that there was any specific  
7 concern that would cause us concern.

8 JUDGE SIPPEL: You were concerned, but you were not very  
9 concerned.

10 THE WITNESS: Sir, we prefer the security of a contract,  
11 and in our experience both parties do, so it's fairly unusual to be  
12 out of contract for any length of time, much less the two years  
13 when I joined or the almost five years I believe when the retiering  
14 happened.

15 JUDGE SIPPEL: Did you know when you went with them in  
16 2007 that they didn't have a contract? Were you aware of that?

17 THE WITNESS: I don't recall whether I knew or didn't  
18 know when I joined the company.

19 JUDGE SIPPEL: Well, wouldn't you want to know that?

20 THE WITNESS: I certainly knew as soon as -- no, I would  
21 not want to know that. I mean -- to join the business, do you  
22 mean, sir?

23 JUDGE SIPPEL: Yes.

24 THE WITNESS: Did I want to know that? I -- that  
25 information is typically fairly confidential.

1 JUDGE SIPPEL: Well, no. I --

2 THE WITNESS: I knew -- I knew how many subs we were  
3 carried in, and I knew we were carried on Cablevision?

4 JUDGE SIPPEL: Yes?

5 THE WITNESS: But I cannot tell you whether I knew or  
6 didn't know the details of whether we were on contract or not with  
7 Cablevision. I just don't know.

8 JUDGE SIPPEL: Wouldn't the security of your job hinge on  
9 that?

10 THE WITNESS: The security of my job hinge on the single  
11 Cablevision contract or on our distribution? I guess --

12 JUDGE SIPPEL: Well, explain it to me.

13 THE WITNESS: Well, Your Honor, what I would say is that  
14 we -- I knew at the time that GSN was in roughly [REDACTED] homes.  
15 And having been, you know, previously running Universal, which had  
16 a number of large cable networks, I had some experience in  
17 affiliate discussions. It would be very rare for any network that  
18 was carried to be retiered.

19 So I was not concerned about the security of  
20 distribution, knowing what the distribution was. And I wish I  
21 could tell you, but it is eight years ago, what I knew on the day  
22 of joining. Shortly after joining, of course, I would know that we  
23 were out of contract with Cablevision, but in contract with  
24 essentially everybody else.

25 JUDGE SIPPEL: Is that a common occurrence in the

1 industry?

2 THE WITNESS: It's certainly, in my experience -- and I  
3 can really only speak to my experience -- unusual for --

4 JUDGE SIPPEL: In your experience.

5 THE WITNESS: -- for more than a few months. I would  
6 have been surprised, I think, to know that both parties had been  
7 willing to be out of contract for that long. It's a little  
8 unusual. Most affiliates, most of the distributors, themselves  
9 don't like to be out of contract.

10 So that would have seemed unusual to me, if I had known  
11 at the time. And it seemed unusual to me when I joined and learned  
12 of it. Yes, sir.

13 JUDGE SIPPEL: Well, was there -- okay. So you're kind  
14 of curious about it, then, but it's rather lengthy compared to what  
15 your experience has been being out of contract. What was the --  
16 what was the something, if there -- if I can frame it -- phrase it  
17 that way, what was the something that -- the glue that held -- that  
18 you thought was holding it together?

19 THE WITNESS: Well, practice in the industry. It was  
20 certainly, in my experience and knowledge, very unusual for a  
21 network as well established and as well performing as GSN to lose  
22 a major distributor. Certainly never happened to me in the last  
23 company I was in, you know, hasn't happened at GSN.

24 So you would never expect something like that. The issue  
25 I probably would have been more concerned about at the time -- in

1 fact, I know I was concerned about at the time -- was what were  
2 opportunities to grow distribution. Would GSN be -- being by  
3 itself, without any leverage, without any relationship with a  
4 distributor, be able to grow distribution, would have been my  
5 greatest concern at that point, and has been throughout my time  
6 there.

7 JUDGE SIPPEL: Of course, advertisers know that, right?  
8 Or don't they know that?

9 THE WITNESS: They certainly know the number of places  
10 where distributed. They certainly know the extent to which we're  
11 part of a broad group of networks, which we of course are not.  
12 We're a stand-alone company. And they certainly know whether you  
13 have the protection of a big distributor, I would think.

14 JUDGE SIPPEL: But they don't know the status of your  
15 contract.

16 THE WITNESS: They know the number of homes that we are  
17 carried in.

18 JUDGE SIPPEL: But they don't know the status of your  
19 contract. They don't know --

20 THE WITNESS: They would -- they would not, sir.

21 JUDGE SIPPEL: They are not -- it's none of their  
22 business, and it would be withheld from them deliberately.

23 THE WITNESS: Most --

24 JUDGE SIPPEL: So they didn't get excited.

25 THE WITNESS: Excuse me. Most contracts are explicitly

1 confidential in this industry.

2 JUDGE SIPPEL: Yes.

3 THE WITNESS: So we -- would not -- most advertisers rely  
4 on third-party services to tell them how many homes a particular  
5 network is accessing.

6 JUDGE SIPPEL: All right. Okay. Okay. You know, I can  
7 tell you an unrelated story about that, that someone in my family  
8 near and dear to me who has got -- who is separated from somebody,  
9 and neither one will file for divorce, because they don't want the  
10 kids to know it -- who is filing for divorce. So they are out of  
11 contract kind of thing.

12 (Laughter.)

13 And it may never get resolved. It's interesting, though.

14 THE WITNESS: We were hoping to stay married here, sir.

15 JUDGE SIPPEL: Yes.

16 (Laughter.)

17 I'm sorry. I'm taking -- I'm stealing your thunder.

18 MR. SCHMIDT: There is no thunder to steal, Your Honor.

19 BY MR. SCHMIDT:

20 Q Let's look at a document from how you learned about the  
21 tiering decision. And let me just ask you, before we go to the  
22 document, take us up to December 2010 when you learned about the  
23 tiering decision. How did you learn about it?

24 A So I learned about the tiering decision from Mr.  
25 Gillespie, who was our Head of Affiliate Relations, which means he



1 would be responsible for the relationships with Cablevision and  
2 others, who told me he had received a letter saying that we would  
3 be tiered.

4 Q Was the way you learned unusual?

5 A I have never heard of anything --

6 MR. COHEN: Objection, Your Honor.

7 THE WITNESS: -- in the industry.

8 JUDGE SIPPEL: Sustained. Sustained objection.

9 BY MR. SCHMIDT:

10 Q In your experience, was the manner in which you learned  
11 -- in your 20 years of experience in the television industry, was  
12 the manner in which you learned about the tiering decision from  
13 Cablevision out of the ordinary?

14 A I have --

15 Q -- consistent with the rest of your experience in the  
16 television industry?

17 A I have never heard of another established cable network  
18 being dropped or retiered, except at the end of a fairly long and  
19 often disputatious negotiation.

20 Q Have you had any of those negotiations?

21 A We have not.

22 Q Were any such negotiations offered by Cablevision when  
23 they told you about this?

24 A They explicitly said it was non-negotiable.

25 Q Okay. Did you, nevertheless, try to turn them around?

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1           A     Of course.

2           Q     Let's take a look at Tab 6 in your binder, Exhibit 99,  
3     which has been admitted into evidence. Do you see at the bottom of  
4     --

5           JUDGE SIPPEL: Do you have a number for this -- a tab  
6     number for this?

7           MR. SCHMIDT: Tab Number 6, Your Honor.

8           JUDGE SIPPEL: Tab 6. Okay. I see it. I see it.

9           BY MR. SCHMIDT:

10          Q     Exhibit 99. Do you see the bottom half of this email is  
11     written by you to various individuals, including the first listed  
12     person is Derek Chang?

13          A     Yes, sir.

14          Q     Is this you informing people from the companies that own  
15     you about the tiering decision?

16          A     These four individuals at the time were actually our --  
17     our Management Committee, which is what we call our Board of  
18     Directors. So this was informing the equivalent of our Board about  
19     this.

20          Q     Okay. Do you see reference there in the first sentence,  
21     without warning or negotiation, Cablevision just informed us they  
22     will be dropping GSN to a poorly distributed tier on February 1st,  
23     do you see that?

24          A     I do.

25          Q     And you talk about the loss of subscribers, the loss of

1 revenue, and then at the end of that first paragraph, do you make  
2 reference to them saying they have no interest in negotiating?

3 A Yes, sir.

4 Q In the second paragraph you state, when Cablevision  
5 executes this move, it may prove highly damaging to GSN. Is that  
6 an immediate concern you had when you learned about the Cablevision  
7 tiering announcement?

8 A Yes, sir. Immediately.

9 Q If you continue, no other affiliate has ever threatened  
10 to drop GSN, and several continue to grow us. Is that true? Or  
11 was that true as of this date?

12 A True as of the date, and true since.

13 Q Okay.

14 JUDGE SIPPEL: What was this -- several continue to grow  
15 us?

16 BY MR. SCHMIDT:

17 Q What does that mean?

18 JUDGE SIPPEL: What does grow us mean?

19 THE WITNESS: Expand our distribution. In other words,  
20 increase the number of their subscribers that included us in their  
21 packages.

22 BY MR. SCHMIDT:

23 Q Is that you saying, even as others are lifting us up,  
24 they are pulling us down?

25 A It is -- it is to point out that this action was unusual

1 and not part of a general trend.

2 Q Okay. Why was it you were reaching out to Mr. Chang?

3 A Well, I was reaching out to the entire Board, frankly.  
4 It was to find somebody who might have a relationship at a level of  
5 Cablevision where we could actually start negotiations, as they  
6 would have been unwilling to talk to us.

7 I have never met with Cablevision during the two --  
8 two-plus years I have been CEO, because they have never been  
9 willing to meet with me, despite repeated requests. So we didn't  
10 have any relationships. And, really, what this email led to is,  
11 can any of you talk to anyone there and find out why this happened  
12 and what we can do to turn it around?

13 Q Okay. Did you have specific discussions with Mr. Chang  
14 about talking to Cablevision?

15 A I did, because he responded that he had relationship --  
16 he had several relationships with Cablevision and would call to  
17 find out what it is that had precipitated this and --

18 Q The Judge heard from both sides this morning on this idea  
19 of Cablevision demanding -- Mr. Chang was at DIRECTV, correct?

20 A Yes.

21 Q Okay. The Judge has heard about Cablevision demanding  
22 that in order to keep GSN where it was, DIRECTV would have to carry  
23 Wedding Central. Is that something you're familiar about, not the  
24 argument, but those facts?

25 A It is something Derek did report to me.

1           Q     Okay.  When you reached out to Mr. Chang, was your  
2     purpose in reaching out to Mr. Chang to have him raise this  
3     possibility of DIRECTV carrying Wedding Central?

4           A     No.

5           Q     Did you have facts that led you to believe whether such  
6     a request of Mr. Chang would be successful?

7           A     Well, unfortunately, I had Derek's rather explicit  
8     statement that we are never going to interfere in your  
9     negotiations.

10           MR. COHEN:  Your Honor?

11           THE WITNESS:  And the CEO, Mike White, said --

12           JUDGE SIPPEL:  Hold on.  Hold on just a second.

13           THE WITNESS:  Oh, excuse me.  I'm sorry.

14           JUDGE SIPPEL:  We've got an objection coming.

15           MR. SCHMIDT:  Your Honor, can I just ask, as a general  
16     matter, that the witness not be interrupted mid-answer?  I think  
17     the normal course for an answer, especially we don't have a jury  
18     here, would be to let the witness finish, and then make the  
19     objection.

20           JUDGE SIPPEL:  Well, he's going to be prejudiced by the  
21     answer.

22           MR. COHEN:  That's my point, Your Honor.  Your Honor has  
23     ruled, in connection with the written testimony, that he cannot  
24     testify about what Mr. Chang told him.  It's no less hearsay to  
25     have him sit on the stand and relay what Mr. Chang told him

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1 JUDGE SIPPEL: Well, I did fill it out, didn't I?

2 MR. SCHMIDT: This is him stating, Your Honor, his  
3 understanding of -- he was accused this morning in opening argument  
4 of reaching out to Mr. Chang, so that Mr. Chang would propose this  
5 Wedding Central swap. I'm asking him his understanding, not the  
6 truth of what Mr. Chang might or might not have said to him, but  
7 his understanding of what Mr. Chang's position was on that  
8 question.

9 JUDGE SIPPEL: Overruled. You opened the door this  
10 morning. I remember specifically what you talked about. You may  
11 answer the question now.

12 BY MR. SCHMIDT:

13 Q Let me just frame my question again, Mr. Goldhill, before  
14 you got interrupted. My question, sir, is, did you have specific  
15 facts in your head that gave you a view as to what Mr. Chang would  
16 say if you said to him, help us out here. Give Wedding Central  
17 carriage so we can get back.

18 A So Derek had said to me, as had his boss, Mike White,  
19 that we could never count on them to do what other distributors  
20 typically did with services they had interest in, which is use  
21 their leverage, their trading currency, if you will, with other  
22 networks owned by other distributors. To protect us, they had made  
23 very clear they thought that their interest in us was passive, and  
24 that they were not going to get actively involved in management,  
25 including using that leverage. And I --

1 JUDGE SIPPEL: Well, just a minute. Slow down.

2 THE WITNESS: I'm sorry, sir.

3 JUDGE SIPPEL: They being the upper management of  
4 Cablevision?

5 THE WITNESS: Of DIRECTV. I'm sorry, sir.

6 JUDGE SIPPEL: Oh, DIRECTV.

7 THE WITNESS: So Derek Chang and Mike White had both said  
8 to me that you really cannot count on us to use leverage.

9 JUDGE SIPPEL: Now, but DIRECTV didn't have an interest  
10 in Game Show, is that right?

11 THE WITNESS: Correct. They were -- they were at this  
12 point -- I'd have to go back and look at the record as to what  
13 their ownership interest was.

14 JUDGE SIPPEL: Well, do your best.

15 THE WITNESS: Well, so it does matter, Your Honor,  
16 because they -- they succeeded to Liberty's interest in us --

17 JUDGE SIPPEL: Right.

18 THE WITNESS: -- during the spinoff. They had a majority  
19 interest in the joint venture. And then, as soon as they could,  
20 they sold the control of the venture to their partner, Sony, so  
21 that they would not be deemed to be controlling us.

22 JUDGE SIPPEL: Right.

23 THE WITNESS: And they have sold down pieces of our  
24 equity to Sony at every opportunity to do so because, as they have  
25 said to me on many occasions, their ownership of us is a passive

1 one.

2 As it relates to the question I was just asked, both  
3 Derek and Michael have said -- Michael being Mike White, the CEO of  
4 DIRECTV, Derek being --

5 JUDGE SIPPEL: White being who?

6 THE WITNESS: The CEO of DIRECTV.

7 JUDGE SIPPEL: Okay.

8 THE WITNESS: Derek Chang being one of their two  
9 representatives on our Board, have both repeatedly said to me, you  
10 should not count on us to either protect you or use leverage to  
11 improve your discussions. And we had never had DIRECTV, in any way  
12 that I could be aware of, involved in any other discussion we had  
13 with any affiliate.

14 JUDGE SIPPEL: So now all -- what prompted them to say  
15 that to you or to your representative? Somebody must have went and  
16 asked them.

17 THE WITNESS: Well, as soon as they bought us, I had the  
18 conversation with them, because --

19 JUDGE SIPPEL: As soon as --

20 THE WITNESS: I'm sorry, forgive me, Your Honor. As soon  
21 as they acquired their interest in us as part of the Liberty  
22 spinoff.

23 JUDGE SIPPEL: Okay. Yes?

24 THE WITNESS: I met with my new directors, because Derek  
25 and Larry Hunter, the General Counsel, became new directors. Larry



1 was the Acting CEO for a year. Then, Mike had been hired, and --

2 JUDGE SIPPEL: And you went to them?

3 THE WITNESS: And I said, you know, there are some  
4 situations where, if you got involved in the negotiation, it would  
5 help us.

6 JUDGE SIPPEL: But did you have anything particular in  
7 mind?

8 THE WITNESS: I'd have to go back and look, but it would  
9 probably be whatever deals were coming up at that point, and I'd  
10 have to go back and look. But I got a very explicit no, which they  
11 have been very consistent on since.

12 JUDGE SIPPEL: And the reason that they gave you?

13 THE WITNESS: Well, because they were not interested in  
14 in any way giving up any value in their core business to help a  
15 business that they didn't regard themselves as long-term owners of.  
16 Under tax law, they had to continue to own our company, but that  
17 was not a strategic decision and was not a long-range decision.

18 And DIRECTV doesn't own positions and programming --  
19 control positions and programming services like ourselves. They  
20 are in the sports business, but they have loudly and publicly said,  
21 we're not in the entertainment business.

22 JUDGE SIPPEL: Well, I mean, but they can help somebody  
23 out, can't they?

24 THE WITNESS: Your Honor, you make the same point I did.  
25 And maybe I -- it would have been helped if we were doing this

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1 together.

2 (Laughter.)

3 But, sadly --

4 JUDGE SIPPEL: Have you got room for me?

5 THE WITNESS: Yes, sir. I don't know how Jay would feel  
6 about our having this conversation right now.

7 (Laughter.)

8 But he seems pretty open-minded on these points.

9 But, in fact, I had this conversation on many occasions,  
10 and, to be candid, have had this conversation on many occasions  
11 since. They have been pretty -- and, in fairness to them, they  
12 were trying to protect themselves from people coming to them and  
13 using GSN as a way to get leverage. So it does make some sense for  
14 them to say, we have hands off this, say it fairly loudly and  
15 fairly consistently, and to stick to that practice.

16 BY MR. SCHMIDT:

17 Q Did Mr. Chang report back to you on a discussion he told  
18 you he had with people at Cablevision?

19 A So Mr. Chang told me that he spoke -- he did have  
20 conversations --

21 MR. COHEN: Your Honor?

22 MR. SCHMIDT: Let me just actually --

23 JUDGE SIPPEL: Wait, wait, wait.

24 MR. SCHMIDT: I can cut this off, Your Honor.

25 BY MR. SCHMIDT:

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1 Q Just yes or no, did he report back to you on his  
2 discussion --

3 A He did.

4 Q -- with people he had at Cablevision? Let's look at  
5 Exhibit 102.

6 JUDGE SIPPEL: Wait just a second. Let's let Mr. Cohen  
7 finish, please.

8 MR. COHEN: With the amendment, I don't have an objection  
9 to his question.

10 BY MR. SCHMIDT:

11 Q Thank you. Let's look at Exhibit 107, which is the last  
12 tab in your binder.

13 JUDGE SIPPEL: The last tab is Tab 7, correct?

14 MR. SCHMIDT: Tab 7, Your Honor. Yes. JUDGE SIPPEL: Thank  
15 you.

16 BY MR. SCHMIDT:

17 Q Do you see where Mr. Chang writes back to you December  
18 20, 2010, and says, they asked us for something else?

19 A Yes. For something also, yes, sir.

20 Q For something also. Do you remember this discussion that  
21 is referenced in this document that has been admitted into  
22 evidence?

23 A I do, sir.

24 Q Okay. This is where you want to make your objection?  
25 What did he tell you?

1 MR. COHEN: Your Honor, this is what he covered in his  
2 written direct and you struck. My objection in part is grounded on  
3 the fact that the documents don't say it. The document said they  
4 asked us for something also.

5 All of the amendment that Mr. Goldhill is prepared to  
6 offer is exactly what you struck in paragraphs 18, 19, and 20.  
7 Having struck those, he can't testify to it, simply because there  
8 is a document in evidence that says they asked us for something  
9 also.

10 MR. SCHMIDT: That's why I said to Your Honor I was going  
11 to come back to this with documents. I mean, I have a document  
12 that has not been objected to where the position Cablevision is  
13 taking is literally the document says they asked us for something.  
14 He is about to say what that is.

15 It's as much for the truth of -- it's as much for the  
16 impact on him as it is for the truth of the matter. We have the  
17 truth of the matter from other documents, and they are objecting to  
18 that question. What is the something also? That doesn't make  
19 sense to us, Your Honor.

20 JUDGE SIPPEL: My ruling is going to be the same. You  
21 opened the door on this in your opening statement. You went down  
22 this road so hard saying that they were expecting to get something  
23 out of DIRECTV, and they were disappointed. But as they were the  
24 ones that instigated the idea that DIRECTV didn't come to them,  
25 along those lines, let's finish the circle here. Let's find out

1 what it was.

2 I'm overruling the objection. Do you understand the  
3 question?

4 THE WITNESS: I do.

5 JUDGE SIPPEL: Okay.

6 BY MR. SCHMIDT:

7 Q What was the something else that -- or the something also  
8 that Mr. Chang told you --

9 JUDGE SIPPEL: Well, this says Cablevision hasn't asked  
10 for -- an ask --

11 MR. SCHMIDT: Yes.

12 JUDGE SIPPEL: -- for Sony.

13 BY MR. SCHMIDT:

14 Q What was the ask for Cablevision?

15 A For Sony or for DIRECTV?

16 Q What was the ask from Cablevision to DIRECTV that Mr.  
17 Chang communicated to you referenced in Exhibit 102?

18 A What Mr. Chang told me is that he was asked to meet with  
19 the programming executives from Cablevision in response to the  
20 request that they discussed, the retiering of GSN, and at that  
21 meeting was told that if DIRECTV was willing to change its decision  
22 on carrying Wedding Channel -- in other words, to carry Wedding  
23 Channel -- the GSN decision would also be reconsidered.

24 Q Okay.

25 A That's what he reported to me.

1 Q Did Mr. Chang explain that, based on his discussions with  
2 Mr. Sapan and Mr. Broussard, it was clear that Wedding Central  
3 launch was the only item that might cause Cablevision to reverse  
4 its decision to retier GSN?

5 MR. COHEN: Could we at least ask him without the  
6 leading, Your Honor?

7 MR. SCHMIDT: I was literally reading his direct  
8 testimony. This is what Your Honor said he opened the door on.

9 JUDGE SIPPEL: Whose direct testimony are we --

10 THE WITNESS: Mr. Goldhill's direct testimony.

11 JUDGE SIPPEL: Let's stay with that.

12 MR. SCHMIDT: That's literally what I was reading.

13 MR. COHEN: What paragraph?

14 MR. SCHMIDT: Paragraph 20. It's the one you objected  
15 to.

16 MR. COHEN: I remember.

17 BY MR. SCHMIDT:

18 Q Let me reference you to paragraph 20. It's in paragraph  
19 -- it's Tab 1 in the binder.

20 JUDGE SIPPEL: Be you sure you understand the question.  
21 Don't let him go too fast on you.

22 MR. SCHMIDT: I have that tendency. The Judge knows me  
23 too well.

24 BY MR. SCHMIDT:

25 Q Look with me if you would at Tab 1, paragraph 20 on page

1 7.

2 A Yes.

3 Q Do you see where it says, Mr. Chang told me that he  
4 turned down Rainbow's proposal --

5 A Yes.

6 Q -- on January 31, 2011, because DIRECTV had previously  
7 decided that Wedding Central did not merit distribution on its  
8 service?

9 A Yes, sir.

10 Q The next day Cablevision moved GSN to its sports tier.  
11 I understand that even after this point Mr. Sapan and Mr. Broussard  
12 continued to lobby DIRECTV to launch Wedding Central, and that  
13 Cablevision continued to link GSN's carriage to a DIRECTV  
14 commitment to launch. Is that accurate?

15 A Yes, sir.

16 Q At any point, did you have power to ensure that  
17 Cablevision could get carriage from Wedding Central for DIRECTV?

18 A We would not be here if I had such power, sir.

19 Q Okay.

20 JUDGE SIPPEL: There are several scenarios under which we  
21 wouldn't be here.

22 (Laughter.)

23 MR. SCHMIDT: All of them very attractive maybe.

24 BY MR. SCHMIDT:

25 Q Going back to Exhibit 102, Tab 7, this discussion that

1 was communicated to you about Cablevision asking DIRECTV to carry  
2 Wedding Central. Did you have an understanding that Mr. Chang  
3 rejected that request prior to the tiering?

4 A I'm sorry. Would you repeat that? I didn't --

5 Q Yes.

6 A -- I did lose you a moment ago --

7 Q It's convoluted. Focusing on the request by Cablevision  
8 that DIRECTV give carriage to Wedding Central --

9 A Yes.

10 Q -- as a condition for bringing GSN back -- are you with  
11 me?

12 A Yes.

13 Q Do you have an understanding as to whether DIRECTV said  
14 no to that request prior to the tiering actually being implemented?

15 A So DIRECTV had said no to the request, according to  
16 Derek, before the retiering decision, and then, as far as he  
17 reported to me, never wavered from that decision not to carry  
18 Wedding Central. But that's as far as I know from that  
19 conversation.

20 Q Okay. Let's look at -- go back to your direct testimony,  
21 please. Page 12, Tab 1. I want to talk about this idea of harm.  
22 And if you look at the -- actually, let's look at the bottom of  
23 page 11, if we could. Do you see where you write, or you state,  
24 based on our financial models, GSN anticipates that it will receive  
25 direct licensing and advertising losses. It carries over to page

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1 12. Do you see that?

2 A I do.

3 Q We are going to have to close the courtroom if I read out  
4 that number, so let me just ask you, is the number that's  
5 referenced there accurate in terms of your direct licensing and  
6 advertising losses on a per year basis?

7 A Yes. It would still be our estimate. I think our  
8 current estimate for advertising revenue loss would be higher.

9 Q Okay.

10 A But that is correct for the period described here.

11 JUDGE SIPPEL: Can you give -- can you state a fraction  
12 by -- would it be five percent, 10 percent, two percent? Just as  
13 --

14 THE WITNESS: Roughly, 15 to 20 percent higher on ad  
15 revenue in the 2015 -- probably '14/'15 period than the earlier  
16 parts, just because the network has gotten more demos, obviously.

17 BY MR. SCHMIDT:

18 Q If you look at the next sentence, you break down that  
19 figure of losses between subscriber fees and then a range for  
20 advertising. Is that accurate?

21 A Yes, sir.

22 Q And is the high end of that advertising range that you  
23 would go 15 to 20 percent above to the current year?

24 A To look at the current impact, I would. During the  
25 period referenced here, though, these assumptions are, I feel,

1 still accurate.

2 Q Okay. And then, do you give an aggregate number as of  
3 the date of your written direct testimony that is accurate, in the  
4 final sentence of that paragraph?

5 A Yes. That's -- do you mean for the four-year aggregate  
6 number?

7 Q Yes.

8 A Yes, sir.

9 Q Okay. Just to give us some kind of metric, and to pick  
10 up on the point the Judge asked about, if you look at the annual  
11 number that you give right at the top of page 12, and you compare  
12 that annual number to some of your metrics, whether it's program  
13 expenses or net profit, what percentage -- can you give us a  
14 percentage to put that in context?

15 A I can. So profitability, which, frankly, is what I focus  
16 on --

17 Q It's your job to focus on profitability.

18 A I think so. Is roughly -- this would be roughly eight  
19 percent.

20 Q Of your overall profit.

21 A The television profits, correct.

22 Q Okay. What about if you tried to quantify it in terms of  
23 programming? Could you give us a sense of what that means in terms  
24 of your ability to invest in original programming -- that amount  
25 of money?

1           A     So the major investment of our network is original  
2 programming. We do roughly 11 or 12 original shows a year, but we  
3 do four tentpole ones, big ones that we expect to drive audience's  
4 network in which we spend a significant amount of money.

5           Those four tend to have production costs and marketing  
6 costs roughly equal to this figure of annual loss. So one way to  
7 think about it, apart from profitability, is it means it is one out  
8 of five potential tentpole originals. And that obviously would be  
9 a meaningful impact on our ability to program the network.

10          Q     Why is that meaningful?

11          A     Because, like most cable networks, though many hours of  
12 the day are filled with non-original programming, it's the original  
13 programming we and others do that define the network, bring in the  
14 new audiences, and, therefore, drive the bulk of our advertising  
15 revenue, and define our relationships with our affiliates.

16          Q     So, in addition to the harm, the quantifiable harm that  
17 you identify in this paragraph on page 12, in Tab 1, Exhibit -- GSN  
18 Exhibit 297, your direct testimony, is there other harm, like loss  
19 of programming opportunities, that comes out of this kind of  
20 action?

21          A     Well, there is -- there is that one. The more important  
22 one I think is the impact in the New York City market.

23          Q     Tell us about that, please.

24          A     Well, New York is still the media capital, and that means  
25 two very important impacts on us. One is it's where most of the

1 advertising agencies that actually buy advertising are, and where  
2 most of their executives live in territories affected by this  
3 retiering.

4           You know, for smaller networks like ourselves, getting  
5 their attention is always a challenge. And hearing, as we  
6 consistently hear, huh, I don't actually get your network in my  
7 household, makes us seem meaningfully smaller than we are.

8           And I should point out that in the negotiations and  
9 discussions I have had with Cablevision in other positions I have  
10 been in, they have always said that was a major reason why their  
11 three million subs or equivalent was worth more to you as a  
12 programmer than somebody else's subs. The reason that they should  
13 be getting premium rates for your network is their dominance of the  
14 New York City market.

15           The second element of that, of course, is launching a new  
16 show, getting the attention of television critics and people who  
17 write about television and do blogs about television almost always  
18 requires you to have a decent New York City launch.

19           The efficiency of our marketing dollars in New York, by  
20 far the most expensive market in the country to launch a show in,  
21 is severely hampered by the fact that in so much of the market you  
22 can't see our show even if we market to that.

23           Q     Are you concerned when Cablevision takes a step like this  
24 that it impairs your standing with other cable companies or MVPDs?

25           A     We were very concerned about that. You know, we -- our

1 relationships in other places had been very, very good, but we were  
2 concerned for a number of reasons. One is that the particular type  
3 of retiering that was done here was to put us on a tier of all male  
4 sports networks, which isn't just bad in terms of the number of  
5 lost subscribers, it is bad in terms of the subscribers you now  
6 have are highly unlikely to watch your television show.

7           The idea of being retiered in a sports network by anyone  
8 else would have been terrible for us. The idea of being understood  
9 that way would be terrible for us. But I think the biggest issue,  
10 when you're a small network like ourselves, is you have no  
11 leverage. You have no big brother to fight for you. You have  
12 nothing to trade. You don't have a big network that can  
13 effectively threaten an affiliate. You are truly on your own, and,  
14 obviously, anything that makes you look weak you hear about.

15           And I think I have mentioned that in many of the  
16 conversations I have -- this matter came up, and it did not come up  
17 as a specific threat such as kind of, you know, nice little network  
18 you have there type of thing. It's I see that you have been  
19 retiered in New York City.

20           Again, you know, we have been very fortunate in fighting  
21 against that. Frankly, this action itself is a form of fighting  
22 against it, and we're telling the industry that we're fighting  
23 against it. But, you know, looking weak and defenseless as an  
24 independent, stand-alone network like ourselves is very, very  
25 difficult.

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1           Q     Have you had some success in the wake of the tiering with  
2 other carriers?

3           A     We have. The network, I believe, has accumulated 10  
4 million new subscribers since the retiering. And I don't believe  
5 I can think of another one of the major MSOs where we haven't  
6 either gained a significant number of subs, significant  
7 penetration, or significant co-marketing arrangements where that  
8 wasn't available. So we have been very fortunate since then. I'd  
9 like to think some of it is that the programming has worked and the  
10 ratings have been -- continue to be successful.

11          Q     Do you, nevertheless, believe that your ability to  
12 compete has been restrained by the tiering?

13          A     There is no question. We have had to fight out of a hole  
14 this great. And, I mean, if you look at -- I am not somebody who  
15 usually panics. I can honestly say that eight years I was at GSN,  
16 this is the single worst thing that has happened to us. And when  
17 you consider I have been running it, that's remarkable.

18                But this is -- you know, as you can read from my text,  
19 this was a major problem. And this was something that I was very  
20 concerned with, because we've done a lot of things to try to  
21 mitigate that harm. You know, we have been far more active in our  
22 affiliate relations. We have doubled the amount of original  
23 programming we have on our air.

24                Frankly, it has reduced our profitability, but we have  
25 done so because we knew that we were very vulnerable because of

1 this action. It has cost us a meaningful amount of direct money,  
2 and it is has forced us to, you know, fight much harder to achieve  
3 what we have achieved. And, yes, I will tell you that we think all  
4 the time about what this would have looked like if our relationship  
5 with Cablevision was as successful as with every one of their  
6 competitors.

7 MR. SCHMIDT: Thank you, Mr. Goldhill.

8 That's it, Your Honor.

9 JUDGE SIPPEL: Okay. Do you want to take a break before  
10 you --

11 MR. COHEN: Let's take five minutes, Your Honor. I have  
12 a meaningful amount of cross.

13 JUDGE SIPPEL: Okay. I can be here until 6:00.

14 MR. COHEN: All right. I can't promise I'll finish by  
15 then, but I'll do my best. I know Mr. Goldhill wants to leave. If  
16 I can, I will.

17 JUDGE SIPPEL: Okay. Let's take five minutes. Well,  
18 it's got to be 10. That will be 4:30. Thank you.

19 (Whereupon, the above-entitled matter went off the record  
20 at 4:17 p.m. and resumed at 4:31 p.m.)

21 JUDGE SIPPEL: Cross examination?

22 MR. COHEN: Yes.

23 JUDGE SIPPEL: Okay, plug in your seatbelt, Mr. Goldhill.  
24 And we're okay with the door open and everything else. Let's go.

25 MR. COHEN: I think so.

1 JUDGE SIPPEL: Let's go.

2 CROSS EXAMINATION

3 BY MR. COHEN:

4 Q Mr. Goldhill, good afternoon. We've met at a couple of  
5 deposition, correct?

6 A Yes.

7 Q Okay, I have a book of exhibits for you, but I want you  
8 to stay with Mr. Schmidt's book for a moment, okay?

9 A Yes, sir.

10 Q Would you turn to Tab 6 which is GSN Exhibit 99? That's  
11 the email that you sent to the members of the board about the  
12 Cablevision retiering, right?

13 A Yes, sir.

14 Q Okay, and by the way, on DIRECTV, on DIRECTV, they  
15 acquired their interest in 2009?

16 A I believe that's right, sir.

17 Q Right, so -

18 A I'd have to go back and - that sounds right.

19 Q So they've had an interest in the network for going on  
20 six years?

21 A They have.

22 Q And have announced a plan to sell it?

23 A That's something - because they're a public company, I'd  
24 have to disclose it in private, which I'm not sure -

25 Q Okay, well, let me withdraw the question. The point -



1 but they've now held their interest for almost five-and-a-half  
2 years?

3 A You're probably aware they've been in the middle of a  
4 merger approval for a long period of time now, and that - all I can  
5 say is that interrupted plans that they have discussed with me.

6 Q Now, did I understand your testimony correctly that Mr.  
7 Chang had made clear to you prior to the end of 2010 that DIRECTV  
8 was not willing to do anything for GSN on carriage?

9 A I shouldn't - well, when you say anything, he was willing  
10 to make phone calls. He was not willing to use leverage or trades.

11 Q Okay, and Mr. Chang had his first conversation with  
12 Cablevision certainly before December 14, right, the top email on  
13 Exhibit 99?

14 A Conversation about?

15 Q About anything with Cablevision about what could be done  
16 to restore carriage for GSN.

17 A Not that I would be aware of. I'm sorry, forgive me on  
18 the dates. The date of my email was December 3.

19 Q Right, all right, let -

20 A You're asking me about this email to me on December 14,  
21 I'm sorry.

22 Q Spoke to Rutledge yesterday, correct?

23 A Yes.

24 Q He wants to have Sapan talk to me about some Rainbow  
25 ideas, right?

1 A Yes.

2 Q You remember him telling you that, correct?

3 A Yes, sir.

4 Q And he said, he said again, was it intentional to piss  
5 off DTV, that's DIRECTV, right?

6 A Yes.

7 Q And do you remember him telling you that?

8 A I remember this email.

9 Q Right, and what Mr. Rutledge told Mr. Chang and what he  
10 relayed to you was that Mr. Rutledge was not aware of the ownership  
11 of Game Show Network, correct?

12 A That is what this email says, yes.

13 Q Right, and so what Mr. Rutledge, the President of  
14 Cablevision, was saying in December of 2010 was that he was not  
15 aware that DIRECTV was one of the owners of GSN, right?

16 A Yes.

17 Q Okay, now, this conversation took place on December 14,  
18 on or about?

19 A This email?

20 Q Correct.

21 A Sorry, yes.

22 Q Okay, and Mr. Chang did not report to you that DIRECTV  
23 wasn't willing to do anything with Wedding Central until January  
24 31, correct?

25 A No.

1 Q Look at Paragraph 20.

2 A I'm sorry -

3 Q Of your testimony.

4 A Of my testimony, yes.

5 Q Mr. Chang told me that he turned down Rainbow's proposal  
6 on January 31, 2011, correct?

7 A Yes.

8 Q Okay, so the day on which the Wedding Central for DIRECTV  
9 trade was turned down was January 31, correct?

10 A No, sir. I'm sorry, the question you asked me was  
11 whether this is when he first turned it down. At least what Mr.  
12 Chang told me is that the request had been made and he had  
13 consistently said over a period of time that he would not actually  
14 make that part of the discussion.

15 Q Okay, let me try to clarify my questions. Mr. Chang was  
16 in discussions with Cablevision or Rainbow in December, correct?

17 A As far as I know, yes, sir. That's what he reported to  
18 me.

19 Q And throughout the month of January, correct?

20 A That's what he reported to me.

21 Q Right, and what he reported to you was that he turned  
22 down a specific proposal to Rainbow on January 31, correct?

23 A Yes, sir.

24 Q Okay, let me ask you to turn back to Exhibit 65, Game  
25 Show Exhibit 65, which is Tab 5 in your book. Now, this is the

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1 upfront analysis, right, that you testified to in response to Mr.  
2 Schmidt's questions?

3 A Yes.

4 JUDGE SIPPEL: What was the tab again?

5 MR. COHEN: Tab 5, Your Honor.

6 JUDGE SIPPEL: I got you, okay.

7 BY MR. COHEN:

8 Q Now, the upfront advertising campaign of the network,  
9 that's in the hands of Mr. Zaccario day to day is it not?

10 A You mean executing an upfront is an advertising sales  
11 function, yes, sir.

12 Q Right, so the material that's presented in Exhibit - in  
13 this exhibit, Exhibit GSN 65, falls within Mr. Zaccario's expertise  
14 more directly than yours, correct?

15 A Well, with all respect to Mr. Zaccario, I'm the CEO of  
16 the company. I set the strategy for the upfront.

17 Q Right.

18 A And John would execute that and report to me on how well  
19 we did. But I don't want to create the impression that this is not  
20 something I'm fairly actively involved in. I usually make a number  
21 of the upfront presentations myself.

22 Q And the strategy of this 2010 to 2011 upfront was  
23 budgeted on the basis of people, not women, isn't that so?

24 A No.

25 Q No? Turn to Page 10 of this exhibit. Let me know when

1 you're there, 10 to 11 Daypart Strategy, and let's just go through  
2 it so we understand it.

3 Now, this breaks down the strategy into daytime fringe  
4 and jackpot, then it goes on the next page to deal with the other  
5 pieces of the day, correct?

6 A Just a second, I need to familiarize myself with the  
7 document.

8 Q You weren't familiar with the document you testified to  
9 on direct?

10 A Well, I -

11 JUDGE SIPPEL: Let him go.

12 MR. GOLDHILL: If it's all right with you, because I'm  
13 not - all right, please tell me your -

14 JUDGE SIPPEL: This is Daypart Strategy?

15 MR. GOLDHILL: Yes.

16 JUDGE SIPPEL: Is that where we are?

17 BY MR. COHEN:

18 Q So this is the strategy that you say you're responsible  
19 for for the upfront, correct?

20 A Correct.

21 Q And what you do in the upfront is you try to make a  
22 decision about how you will price your various ads, right?

23 A Correct.

24 Q Okay, and they're called CPMs, right, the pricing?

25 A Correct, yes, sir.

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1 Q Cost per thousand, correct?

2 A Yes.

3 Q And you try to maximize how much your CPM will be and  
4 advertisers try to negotiate it down, right?

5 A Right.

6 Q And then you have to deliver against the strategy,  
7 correct?

8 A That's right.

9 Q And Mr. Zaccario at least prepares a budget in connection  
10 with this upfront, correct?

11 A Yes.

12 Q And each of the dayparts talks about people 25 to 54, not  
13 women 25 to 54, isn't that true? A S o i t i s  
14 certainly true on this page. The ratings are translated into  
15 people ratings. But as you'll see, you would not only have gotten  
16 to this page once you've read the rest of the presentation in which  
17 it's very clear that what we did is we sold [REDACTED] or more  
18 based on women.

19 Q No, I understood that testimony, sir.

20 A Well, it's in the same - it's what you've given me.

21 Q I - stay with my page, please. Please stay with my page.

22 JUDGE SIPPEL: Just listen to his question.

23 MR. COHEN: Okay?

24 BY MR. COHEN:

25 Q Now, the budget which is reflected in this piece of the

1 strategy document was done on the basis of people, not women, isn't  
2 that so?

3 A That's not correct.

4 Q If Mr. Zaccario testifies to the contrary, he's just  
5 wrong?

6 A No, so when we do a budget, what we do is we do what we  
7 have - may I refer to another page to answer your question, or I  
8 don't refer to another page -

9 Q Go ahead. Go ahead, refer to another page.

10 A So when you see a budget, and the budget for upfronts is  
11 enormous, what you will see is an estimate of how much we will sell  
12 for each of the demos listed on page three in each time period.  
13 That's what a budget looks like. What you're talking about on 10  
14 and 11 is merely summarizing that budget in terms of people.

15 But, in fact, since I've been at the network, the  
16 overwhelming majority of every advertising we have sold for general  
17 rate has been female demos. Keep in mind that you can express  
18 female demos as people, but it's female demos that you're selling  
19 as this document makes very clear.

20 Q I'm not asking you what you're selling. I'm asking you  
21 whether the pricing was based on people as opposed to women?

22 A Oh, no, the - okay, I'm sorry. So pricing is based on  
23 what you actually get for a unit of advertising, right? So the CPM  
24 is actually a price per the amount of people or women you're  
25 selling, but the price is the number you're delivering times the

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1 CPM, right? That's just how you get -

2 Q Right.

3 A So it's how much we will sell - the budget is how much we  
4 will sell each spot for. As I've testified, in almost - certainly  
5 in every year I've been there, [REDACTED] of those spots  
6 were sold on the basis of a guaranteed female delivery like all  
7 networks like ourselves. So the fact that you can then translate  
8 that into a people number doesn't mean anything.

9 And if you look at the underlying documents here, what  
10 you will see is much more consistent with what's in this entire  
11 document, which is the bulk of our spots, overwhelming bulk, are  
12 priced on women, and that's how we budget, and that's how we budget  
13 every year I've been there.

14 Q Mr. Goldhill, the document, page 10, is entitled, 10 to  
15 11 Daypart Strategy, correct?

16 A It is.

17 Q And each of the dayparts that are discussed for the two  
18 pages under the heading, Daypart Strategy, refer to people 25 to 54  
19 and not women 25 to 54, isn't that so?

20 A That's correct.

21 Q Okay, let's move on. Now, I have for you, sir, a book of  
22 documents which I'd like you to look at, but I need you to hold on  
23 to your testimony which is at the front of Mr. Schmidt's book. So  
24 if you want to take that out, I'll give you a book here. I'll give  
25 that to you, and I'll give one - I'll pass it around. It's a



1 little bit lengthy.

2 A Okay.

3 MR. COHEN: You're getting one, Judge.

4 MR. SCHMIDT: Thank you.

5 MR. COHEN: It's no play without Hamlet.

6 MR. GOLDHILL: Yeah.

7 MR. COHEN: Do we have another one for them? I  
8 appreciate it.

9 BY MR. COHEN:

10 Q Now, look at your testimony if you would, sir, and let's  
11 look at Paragraph 5. Do you see that, sir, on page two of your  
12 testimony?

13 A Yes, I have it.

14 Q And in the second sentence it said, in 2004, GSN began  
15 referring to its service as GSN rather than Game Show Network, in  
16 order to present itself as a general interest network that appeals  
17 to women. Do you see that?

18 A I do.

19 Q Okay, would you turn please to Cablevision Exhibit 119 in  
20 the book I gave you? They're in order with the Cablevision  
21 exhibits first if we're lucky, and we're not.

22 A I'm sorry, 119, did you say?

23 Q Yeah, what number - I'm sorry, Exhibit 12, my mistake,  
24 Exhibit 12.

25 A Cablevision Exhibit 12, yes, sir.

1 Q Do you see that?

2 A I do.

3 Q And this is a GSN board presentation draft. Do you see  
4 that, sir?

5 A I do.

6 Q Have you ever seen this document before?

7 A I couldn't tell you.

8 Q Okay, now, look at the from line on the email at the top.  
9 Rich Cronin, he was your predecessor as the President of Game Show  
10 Network, correct?

11 A Yes.

12 Q All right, and he's the person who executed this change  
13 in strategy that you refer to in Paragraph 5, is that right?

14 A In 2004, yes -

15 Q In 2004.

16 A He was the CEO in 2004. I was not.

17 Q Okay, would you turn to - and our documents are branded  
18 down at the bottom, so I'd like you to turn to Exhibit 12, 19 of  
19 29, that says, rebranding marketing, on it. Would you turn to  
20 that, please?

21 A Tell me again, what am I looking for?

22 Q Yeah, 19 of 119 down in the bottom right. Do you have  
23 that?

24 A Yes.

25 Q And before I turn to that, have you produced any document

1 you're aware of in this litigation that says that the purpose of  
2 the rebranding of the network was to change - to present itself -  
3 from Game Show Network to GSN was to present itself as a general  
4 interest network that appeals to women?

5 MR. SCHMIDT: Objection, foundation. The witness has no  
6 way of knowing what we've produced or what we haven't produced.

7 JUDGE SIPPEL: Cross examination, he can answer that  
8 question if he's -

9 MR. COHEN: You can answer that.

10 MR. GOLDHILL: I don't -

11 JUDGE SIPPEL: I'm overruling the objection, I'm sorry.

12 BY MR. COHEN:

13 Look at the branding document and turn to the next  
14 page, 20 of 119. Do you see that? GSN rebranding goals, do you  
15 see that, sir?

16 A Yes.

17 Q And that rebranding is the 2004 rebranding that you  
18 testified about in Paragraph 5 of your testimony, correct?

19 A Part of it. I believe this relates to the iconography of  
20 the network, but it is before my time, so I can't tell you in great  
21 depth about it.

22 Q Right, but the sentence in your testimony in Paragraph 5,  
23 that was before your time as well, in 2004, right?

24 A Yeah, so that would - yes, that would be what I was told,  
25 correct. I was not at GSN at the time.

1 Q Right, but when you wrote this testimony and you signed  
2 it under oath, you believed that this was the purpose of the  
3 rebranding in 2004, right?

4 A Correct.

5 Q Did you look at any documents to see if you were correct?

6 A I knew my predecessor.

7 Q Okay, did you look at any documents, sir?

8 A I couldn't tell you -

9 JUDGE SIPPEL: Who was your predecessor?

10 MR. GOLDHILL: A gentleman named Rich Cronin, who I - is  
11 he identified on this? I believe he is, as the, at least, source  
12 of this presentation.

13 MR. COHEN: Right.

14 MR. GOLDHILL: He -

15 MR. COHEN: No, sir, I don't have a question yet and you  
16 were going to say something?

17 MR. SCHMIDT: He got cut off mid-answer, I think.

18 JUDGE SIPPEL: Did I cut you off maybe?

19 MR. GOLDHILL: I'm fine, thank you.

20 JUDGE SIPPEL: Sorry for that.

21 BY MR. COHEN:

22 Q Now, would you look at the GSN rebranding goals on Page  
23 20 of 119, evolve and expand the brand to being everything  
24 game-related. Do you see that, sir?

25 A I do.

1 Q Okay, is there anything on this page that says that the  
2 purpose of the rebranding was to present GSN as a general interest  
3 network that appeals to women?

4 A There's nothing on this page that I can see.

5 Q How about on the next page, 21 of 119, GSN brand  
6 promises? These are the new brand promises in 2004 that you  
7 testified about in Paragraph 5. Do you see anything that relates  
8 to women?

9 A I do not.

10 MR. COHEN: Turn to Page 24 of 119, 2004 rebranding  
11 marketing priorities. Let's just wait for His Honor to get there.

12 JUDGE SIPPEL: I'm on 21 of 119?

13 MR. COHEN: Now 24, Your Honor, of 119.

14 JUDGE SIPPEL: Go ahead.

15 BY MR. COHEN:

16 Okay, change the name to GSN and repackage network  
17 and website, do you see that, sir?

18 A I do.

19 Q And that's what you testified about in Paragraph 5,  
20 right?

21 A Well, I probably testified more about the things on Page  
22 22.

23 Q Okay.

24 A The previous page.

25 Q Okay, and it says, they launched new programming

1 including Extreme Dodgeball and Celebrity Blackjack. Were those  
2 programs that were of general interest to women?

3 A Not in my opinion.

4 Q Okay.

5 A Which is why I discontinued those.

6 Q Okay, turn please to Page 33 of 119 of this 2004 branding  
7 document. GSN Programming Vision, do you see that?

8 A I haven't gone to it yet.

9 Q Take your time.

10 A Yes.

11 Q To develop and acquire game-related programming that  
12 continually improves viewership and demos, increases interactivity,  
13 creates buzz, and builds GSN's brand as the leader in games on  
14 television, and that was the programming vision when you took over  
15 the network, correct?

16 A No.

17 Q It wasn't?

18 A Well, this is a fairly old document. I took over the  
19 network in 2007.

20 Q Okay.

21 A Did you not tell me this was from -

22 Q We know it's from 2004, Mr. Goldhill.

23 A 2004.

24 Q Right, you testified about what happened in 2004 in your  
25 direct testimony, correct?

1           A       So what I testified to was my understanding of what the  
2 rebrand was intended to do.

3           Q       Right.

4           A       Now, you're showing me a document from three years before  
5 I was at the network, produced by my predecessor, of which I have  
6 no knowledge. I only can know what he and I discussed before I  
7 took over. Please keep in mind that three years later matters in  
8 the television network. Many of the things that you're describing  
9 in here this network was unsuccessful at doing.

10                   So it may well be that the part of what he told me he was  
11 trying to do, and that's why I said - referred to some of the pages  
12 I saw in here, just reading quickly along with you, are more  
13 female-oriented.

14                   But there's clearly an intention in here, as he said to  
15 me, to move the network away from the traditional identification  
16 with the traditional game show genre, and make it broader. That's  
17 clearly his intention. It's certainly what he told me.

18                   It's similar to, I don't know, Women's Entertainment  
19 becoming WE, you know. It's a similar type of thing. Other  
20 networks have done this. This is nothing uncommon.

21                   But this specific document, it really is three years  
22 before I was at GSN. I feel uncomfortable commenting on what he  
23 was trying to say then.

24           Q       Mr. Goldhill, did you feel uncomfortable putting in your  
25 testimony a sentence about what GSN was trying to do in 2004?

1           A       Well, I know that what I inherited was a network that was  
2     selling advertising for women, which is how networks compete. So  
3     you know, is it possible in 2004 my predecessor said, I'm trying to  
4     do this, didn't achieve it, and then told me something different?  
5     It is.

6                   I've never said I was at GSN in 2004. I don't believe  
7     any of our witnesses were at GSN in 2004. So all I can tell you is  
8     what my understanding of the rebrand was, which was to create a  
9     broader network. It was roughly at the same time that GSN started  
10    selling advertising.

11                  And as always, the bulk of that advertising was directed  
12    to female demos because that's what GSN delivered.

13                  I think I've also testified that my predecessor believed  
14    in a much broader demographic strategy than I did, which I changed  
15    upon getting to the company.

16                  And so, I'm not sure - you know, I'm not sure I'm really  
17    comfortable seeing a document from three years before and telling  
18    you exactly what it means. But I am comfortable telling you that  
19    GSN, like other networks, moved from its original name to a  
20    different name to capture a broader audience.

21           Q       Mr. Goldhill, turn to Page 35 of 119, GSN Originals  
22    Fundamentals. And when you arrived at GSN, the originals were the  
23    original programming as opposed to off-share - off-shore -  
24    off-network game shows, correct?

25           A       That's correct.



1 Q Demo target is 25 to 54 and gender-balanced.

2 A Correct.

3 Q That's what it says, correct?

4 A Yes.

5 Q And isn't it a fact that when you took over the network  
6 in 2007, the demo target was 25 to 54 and gender-balanced?

7 A For the originals. So, and again, I can only tell you  
8 what my predecessor told me, that since the bulk of the network  
9 hours were going to continue to be primarily female, he had hoped  
10 to get more men in prime time with relatively few originals. It's  
11 why he did poker. It's why he did dodgeball. He did a couple of  
12 other shows.

13 I believe I said before when I came in I said, you know  
14 what? We sell female demos. We attract female demos. We're  
15 actually going to double-down on female demos, and we're going to  
16 ignore balance.

17 Q Okay.

18 A So -

19 Q I'm going to come to that, sir. That wasn't really my  
20 question. You testified about 2004, about a change in name that  
21 you said was to make a network that appeals to women, right? You  
22 wanted the Judge to believe that the name change from Game Show  
23 Network to GSN was an effort to attract women, correct?

24 MR. SCHMIDT: And I'm going to object. It's not  
25 appropriate -

1 JUDGE SIPPEL: Sustained.

2 BY MR. COHEN:

3 Q You reminded me of something, Mr. Goldhill. You said in  
4 response to the Judge's questions you could never sell men on the  
5 network, is that right?

6 A Well, I'm sorry, I was referring to the upfront  
7 specifically then. When I say, we can never sell men, you know,  
8 obviously when we had poker on the air, we were selling only men.

9 Q Okay, so let's talk about that. For some considerable  
10 period of time, and we'll go through the specifics in a little bit,  
11 when you were the CEO of this network, you had poker programming,  
12 correct?

13 A We did, yes, sir.

14 Q Right, February 2011 until the Justice Department shut  
15 down the poker program, correct?

16 A No, they did not shut down the programming. They shut  
17 down the businesses of the people who paid for the programming, but  
18 they never shut down the programming.

19 Q And you sold advertising, at least in the scatter market,  
20 on poker programming to men, correct?

21 A Correct.

22 Q So you limited your questions to the upfront and I want  
23 to clarify it. There are different types of advertising, correct,  
24 different aspects of advertising? There's the upfront, correct?

25 A Yes.

1           Q     And the upfront is general rate advertising that you sell  
2 at the beginning of a season, right?

3           A     Yes.

4           Q     And you said in response, I believe, to either the  
5 Judge's question or Mr. Schmidt's question, that you didn't sell  
6 men in the upfront, correct? And the upfront is only a portion of  
7 the direct response advertising that you sell over the course of -

8           A     May I correct you? The upfront, we do not sell direct  
9 response advertising.

10           JUDGE SIPPEL: Say that again. I didn't hear you.

11           MR. COHEN: I'll correct my question.

12           JUDGE SIPPEL: No, I need his -

13           MR. COHEN: I misspoke.

14           JUDGE SIPPEL: Your voice trailed off.

15           MR. GOLDHILL: I'm sorry, Your Honor. Direct response  
16 advertising is the opposite of general rate advertising. We don't,  
17 in fact, sell that in the upfront. The upfront is general rate  
18 advertising, and I think that was a misstatement.

19           MR. COHEN: Yeah, I made a mistake, so let me ask the  
20 question again so we get it right.

21           BY MR. COHEN:

22           Q     Let's just back up again. There are two kinds of general  
23 advertising that you sell, direct response advertising and general  
24 rate advertising, correct?

25           A     Yes, and infomercial.

1 Q And infomercial. Let's just stick - move the infomercial  
2 to one side, all right? Between direct rate advertising and  
3 general - direct response advertising and general rate advertising,

4

■

■

7 Q Right, and direct response advertising is not sold to a  
8 women's demographic, correct?

9 A It's not sold on the basis of demographic at all.

10 Q Correct.

11 A But just so that -

12 MR. COHEN: That's not the question. Mr. Schmidt can ask  
13 you that, sir. Try to answer my questions yes or no.

14 MR. SCHMIDT: It is improper, Your Honor, for him to be  
15 interrupting the witness and lecturing the witness mid-answer. If  
16 he wants to ask Your Honor to strike an answer or direct the  
17 witness, that's different, but you can't interrupt the witness in  
18 the middle of his answer.

19 JUDGE SIPPEL: Well, that exchange was a little garbled,  
20 so you're going to have to start all over again.

21 MR. COHEN: Okay.

22 BY MR. COHEN:

23 Q

■

■

1 Q And it is not sold, yes or no, on the basis of a female  
2 or a male demographic?

3 A Oh, well, that is false.

4 Q Okay.

5 A No, your statement is false.

6 Q In what way is it false?

7 A So it is sold on the basis of the audience composition.  
8 What's different is that you're not guaranteeing a specific  
9 demographic. So for GSN, when we sell direct response, our  
10 advertisers still want to know the demographics of our audience,  
11 we're just not guaranteeing it. That's the difference.

12 Q Okay, so you don't -

13 A So they would still care. So our direct response, like  
14 all of our advertising, is sold to advertisers who want a 65 to 70  
15 percent female network.

16 Q But you're not guaranteeing that demographic, correct?

17 A We're not - that's right. The terms of direct response  
18 advertising are you don't guarantee delivery, but clearly no  
19 advertiser buys on our network without knowing the skew of our  
20 audience.

21 Q Now, let's go back to general rate advertising, okay?  
22 That is sold on the basis of guaranteeing demographics, correct?

23 A Yes, sir.

24 Q And you testified in your direct testimony that during  
25 the upfront, the network did not sell advertising to a male

1 demographic, correct?

2 A Correct.

3 Q Now, but the network did sell advertising to a male  
4 demographic with respect to poker, correct?

5 A Yes, sir.

6 Q And in fact, in the many years, in the early years at -  
7 that you were at GSN, the poker advertising that was sold to men  
8 was your most lucrative single advertising, correct?

9 A Correct.

10 Q So when you said you didn't sell to men, you were leaving  
11 poker to one side?

12 A I mentioned it with one exception, what I said in my  
13 testimony, and that exception is important to understand. Poker  
14 was essentially an infomercial. The poker sites that you mentioned  
15 the Justice Department shut down came to us and other programmers  
16 and said, we want you to put this programming on the air. We will  
17 pay for it and you will make money.

18 When I got to GSN, I significantly reduced the number of  
19 hours we had that programming, put it on our least well-known  
20 nights, and phased it out because I felt that even though we made  
21 money on it, and it's the only original programming we've ever made  
22 money on, even though we made money on it, it was inconsistent with  
23 the brand we were trying to build.

24 The Justice Department made that decision for us by  
25 taking the advertisers out of business. The moment that the

1 advertisers who paid for the show, and there were just a handful of  
2 them, left, we cancelled it.

3 MR. COHEN: Did you have -

4 JUDGE SIPPEL: Who were the advertisers? What clients?

5 MR. GOLDHILL: Off-shore gambling sites, Your Honor. So  
6 when it was thought that that might be a legal allowable business,  
7 off-shore gambling sites paid us and several other networks to  
8 produce poker programming on which they were, in some cases, the  
9 exclusive advertisers, and they were just glorified prime time  
10 infomercials.

11 When I got to GSN, I felt it was too big a part of our  
12 schedule, inconsistent with our brand, and it was a very difficult  
13 decision because, as you point out correctly, we got  
14 extraordinarily high rates for it, as did everybody who had these  
15 programs on the air, and we were walking away from profit and  
16 downgrading it.

17 But we consistently downgraded it once I made the changes  
18 in programming, and as you mentioned, ultimately pulled it from our  
19 air.

20 JUDGE SIPPEL: What were the hours that it was being  
21 broadcast, this poker stuff?

22 MR. GOLDHILL: Your Honor, I'm afraid it was a broad  
23 range. When I got to GSN, poker and then related spin-off  
24 programming, was a bigger part of our network because, as I  
25 mentioned, my predecessor was hoping in prime time to achieve more

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1 gender balance.

2 When I got to GSN, we very quickly moved it to a night.  
3 I would be relying on my memory, and I'd rather not do that, if  
4 it's possible, to actually answer that question without referring.  
5 But over time, we tried to move it to a small and as undesirable  
6 part of our schedule as possible.

7 MR. COHEN: Well, let's talk about that. Turn to Exhibit  
8 - let's follow-up on the Judge's question. Turn to Cablevision  
9 Exhibit 151 in your book. 151 Cablevision, Your Honor.

10 JUDGE SIPPEL: Was the Justice Department going after  
11 off-shore tax shelters too or just the gambling?

12 MR. GOLDHILL: Sir, that's beyond my pay grade.

13 MR. COHEN: In the big book, Your Honor.

14 JUDGE SIPPEL: Okay.

15 MR. COHEN: Yeah, CV 151.

16 JUDGE SIPPEL: CV 151, coming up, coming up.

17 BY MR. COHEN:

18 Q And this is GSN's schedule for December 6, 2010, correct?

19 A Yes.

20 Q The same - within a week of when you learned of the  
21 retiering by Cablevision?

22 A Correct.

23 Q Okay, and let's just set a few things. Prime time for  
24 GSN is 7:00 to midnight, correct?

25 A Yes.



1 Q Okay, and it's called prime time because it's when you  
2 can generate the highest ad sales, correct?

3 A The largest audiences.

4 Q The largest, and therefore the highest ad sales, right?

5 A Usually, sir, yes.

6 Q Right, and in December of 2010, you were showing poker on  
7 prime time from 9:00 to midnight on Saturday night, correct?

8 A Yes, sir.

9 Q And you were showing poker on Sunday night prime time  
10 from 9:00 to midnight, correct?

11 A Yes, sir.

12 Q So three-and-a-half years after you got to this network,  
13 on two of the seven nights, you were still showing poker on prime  
14 time, isn't that so?

15 A Those are - Saturday and Sunday are GSN's weakest nights,  
16 and as I just had said to you, we moved it instead of being the  
17 hallmark of our schedule, to the weakest nights.

18 And if you look at your schedule here, you'll see that  
19 all of the new original programming we have is in prime time,  
20 Monday to Friday. We had moved poker to our weak nights of  
21 Saturday and Sunday, and, excuse me, that is the deliberate  
22 decision I referred to.

23 Q And in your experience, since you're an experienced  
24 person in the television industry, Sunday night is an important  
25 night in television, is it not?

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1           A       It is, but not for GSN. Historically it has not been for  
2 the very reasons you're about to mention which is the major  
3 entertainment networks do, particularly the HBOs and the pay  
4 networks, do their big originals on Sunday. We have a very hard  
5 time competing.

6                   So historically, that's exactly the reason that we moved  
7 poker to Sunday night. The male audiences that love poker,  
8 frankly, gamble in these off-short sites and found the programming,  
9 would find it in whatever night we put it on, so we put it on our  
10 least competitive two nights.

11           Q       All right, but you said you were eager to get rid of the  
12 poker programming because it didn't fit, correct?

13           A       Yes, sir.

14           Q       But three-and-a-half years after you took over the  
15 network, you still had poker on two nights a week, right, in prime  
16 time?

17           A       Well, you'll notice we're down to a - your statement is  
18 correct. It's on two nights a week, as I mentioned, our two  
19 weakest nights, in 2010.

20           Q       Okay, and in fact, you promoted to advertising partners  
21 the fact that you drew a male audience for poker, correct?

22           A       Yes, and one thing that - I'm glad you mentioned that  
23 because poker is the only -

24                   MR. COHEN: Mr. Goldhill, could you - Your Honor, may I  
25 please -

1 JUDGE SIPPEL: Yeah, yeah, yeah, okay. Just answer yes  
2 or no as best you can. You can explain later.

3 MR. GOLDHILL: Only to those clients who would buy poker.

4 MR. COHEN: Okay, would you turn to Exhibit 138, please?

5 JUDGE SIPPEL: So did we - okay.

6 MR. COHEN: I'm sorry, Your Honor.

7 JUDGE SIPPEL: Did we get a clean answer there? You're  
8 satisfied with his answer?

9 MR. COHEN: Let me ask the question again, Your Honor.

10 BY MR. COHEN:

11 Q You marketed poker to advertisers, did you not?

12 A Only to advertisers who would buy poker.

13 Q Right.

14 A Which is a very small number of advertisers.

15 Q Would you look at Cablevision Exhibit 138 in your book  
16 entitled, High Stakes Poker, Season 7?

17 A Yes.

18 Q Now, Season 7 was the season that you launched in 2010,  
19 correct?

20 A Yes.

21 Q So this was, in fact, a promotional document that Game  
22 Show Network created in 2010 trying to sell promotions or  
23 advertising on poker, right?

24 A Yes.

25 MR. COHEN: And turn, if you would, to Page 11 of 17 of

1 Exhibit 138.

2 JUDGE SIPPEL: Eleven, okay.

3 MR. COHEN: Eleven of 17. It's actually number 11.

4 JUDGE SIPPEL: I got you.

5 MR. GOLDHILL: Yes.

6 BY MR. COHEN:

7 Q It says, GSN Men 25 to 54 rank number one among all cable  
8 networks for watching poker regularly on TV, correct?

9 A It's what it says.

10 Q Do you think that's not a true statement?

11 A I'm not even sure - I'm not sure what it means,  
12 unfortunately.

13 Q You don't know what that means?

14 A I don't know what it means, what the over-indexing means,  
15 I don't know.

16 Q Do you think that your promotional people or advertising  
17 people would put out a document that was false?

18 A I don't think it's false. I'm sure there's a statistic,  
19 I just - I can't tell you what that means.

20 Q Okay, and if you turn to the next page that says, GSN Men  
21 18 to 49 rank number two among all cable networks for watching  
22 poker regularly on TV, you don't know what that means either?

23 A Well, I do know this is the networks that had poker  
24 programming. So as you can see, it's a broad variety of networks  
25 including MTV. So poker at this point, thanks to those off-shore

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1 poker sites you mentioned, was paying to be on a lot of networks of  
2 which ours was one.

3 Many of these networks, Investigation Discovery, ESPN2,  
4 you know, Headline News, you know, are obviously not in the poker  
5 world. We were one of these networks on which poker sites had paid  
6 to have poker programming.

7 Q Yeah, and ESPN2, and Headline News, and the other  
8 networks that you mentioned, they're not in the women's programming  
9 world either are they?

10 A Forgive me, I don't know who - I don't know - WGN is  
11 certainly - delivers significantly to women. It sells more women.  
12 MTV obviously does as well. But I couldn't tell you - I mean, ESPN  
13 obviously is in the male business.

14 I don't think you'd find a consistent - if you look at  
15 this group of networks showing poker, I think you'd find several  
16 different demographic skews. They were buying where they could  
17 buy. And I will tell you that the network, you know, certainly  
18 under my predecessor, enjoyed the profits from it, as did we.

19 Q Right.

20 A We're a small network.

21 Q Right, you did not get rid of the poker programming,  
22 correct -

23 A We were -

24 Q - until the advertisers were shut down?

25 A No, we did reduce the amount we were showing it. We also

1 eliminated all of the spinoffs of poker for which we were not  
2 explicitly paid, so we did significantly reduce it.

3 And just to be clear on this point, my predecessor whom  
4 you asked about, believed that poker on GSN could actually help  
5 rebalance the network. I did not believe that. And so, he  
6 believed that poker could be the foundation of other shows. He did  
7 a blackjack show for example. He did other casino-based shows and  
8 was developing them.

9 We got rid of all of those because they were inconsistent  
10 with the brand. We kept poker, frankly, for the same reason we  
11 keep infomercials. It's a business proposition.

12 Q Did you play any infomercials on prime time?

13 A I don't remember putting any infomercials on prime time,  
14 but the poker guys were not willing to pay us this amount of money  
15 to be on any other time.

16 Q Right, so you took their money and kept them on prime  
17 time two nights a week, correct?

18 A We did, yes, sir.

19 MR. COHEN: Okay, let me show you another document.

20 JUDGE SIPPEL: When did the Justice Department shut it  
21 down? What year was it?

22 MR. GOLDHILL: I'm remembering '11.

23 JUDGE SIPPEL: '11?

24 MR. GOLDHILL: But obviously, we'll find that out for  
25 sure, but I'm remembering '11.

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1 JUDGE SIPPEL: That's the ball park?

2 MR. GOLDHILL: Yes.

3 JUDGE SIPPEL: So the amount of time that the - well, it  
4 was the year anyway, of the decision to move the programming - move  
5 GSN up to a sports tier. That happened in January or February of  
6 '11, of 2011?

7 MR. GOLDHILL: Yes, sir.

8 JUDGE SIPPEL: Okay, all right. Did Cablevision ever  
9 call you up and say, what the hell are you doing with that poker  
10 stuff? Why don't you get rid of that stuff?

11 MR. GOLDHILL: I had no discussions with Cablevision  
12 before the retiering, so they didn't call me about anything. I  
13 have never heard such a conversation.

14 JUDGE SIPPEL: Did they ever care? I mean, do they care  
15 what the hell you show?

16 MR. GOLDHILL: I can't - I can't speak for them, but we  
17 make an effort to get our affiliates to care about what we put on  
18 the air. As I mentioned, I try every year to meet with every one  
19 of our major affiliates and brag about our programming. Whether  
20 they care or not, I'm not sure.

21 JUDGE SIPPEL: Really?

22 MR. GOLDHILL: I just - I haven't been in that - in their  
23 position, so I probably couldn't speak for them. You know, our  
24 sense is they care about the numbers we deliver, the loyalty of the  
25 audience, and in some cases, the effectiveness of the co-promotion

1 opportunities, things we do together.

2 JUDGE SIPPEL: Let's say hypothetically if the Justice  
3 Department hadn't shut that down, and hypothetically, as I said,  
4 you saw a reason to keep it on because it enabled you to do other  
5 things because the money was so good, do you think you would have  
6 been put up on a sports tier? I know that's very, very iffy, but  
7 what's your best shot at that one?

8 MR. GOLDHILL: At the time, we had the maximum amount of  
9 poker programming on the air, we were a 68 percent female network.  
10 So even when we had the most poker programming we had, it's impact  
11 on our overall skew was very small.

12 Counsel is correct that during the hours we had poker, we  
13 were mostly men. But for the other 160-so hours a week, we were a  
14 68 percent female audience. Nobody was going to put us on a sports  
15 tier on that basis, sir.

16 JUDGE SIPPEL: Nobody would put you on a sports -

17 MR. GOLDHILL: Well, we had been on one sports tier  
18 historically, and were removed from it, yeah.

19 JUDGE SIPPEL: So the sponsors, these characters  
20 off-shore who were sponsoring this thing - by the way, what are  
21 their businesses called, Happy Honduras?

22 MR. GOLDHILL: I think they had more effective names. I  
23 have blocked them out of my mind.

24 JUDGE SIPPEL: It's one of those things you -

25 MR. GOLDHILL: But they were well known, and it was quite



1 - excuse me, Your Honor, but it was quite a big issue. A number of  
2 these guys were actually indicted, and all of the poker - I  
3 shouldn't say all, much of the poker programming on television -

4 JUDGE SIPPEL: I'm shocked that they would be indicted.

5 MR. GOLDHILL: There had been some question as to whether  
6 what they were doing was legal or not before the Justice Department  
7 -

8 JUDGE SIPPEL: That's a line from Casablanca. Don't  
9 worry. But I'm really - am really amazed at this. How long was it  
10 on - how long was that program on GSN?

11 MR. GOLDHILL: So when I got there, we were doing both  
12 the World Poker Tour and High Stakes Poker.

13 JUDGE SIPPEL: Well, just give me - give me a range. Was  
14 it one year, two years, three years, four years, five years?

15 MR. GOLDHILL: Well, so, when I was - I started in '07.  
16 It had already been on for some period of time. I don't,  
17 unfortunately, remember the period of time. We removed it  
18 instantly in '11. I should mention -

19 JUDGE SIPPEL: Yes, but you were there in '07.

20 MR. GOLDHILL: Correct, so it was on in '07 already. It  
21 was -

22 JUDGE SIPPEL: So you didn't remove it instantly.

23 MR. GOLDHILL: No, we -

24 JUDGE SIPPEL: You just removed it instantly in '11.  
25 Well, that's when they were shut down by the cops.

1 MR. GOLDHILL: So unlike any other original programming  
2 we were doing -

3 JUDGE SIPPEL: Right.

4 MR. GOLDHILL: - this was profitable. And just to make  
5 clear, we - our programming, we all - we lose money on, right.  
6 When we do an original show, it's an investment in the network. We  
7 lose a lot of money.

8 And so, poker never came out of our budget in any sense  
9 because we would make the show at a guaranteed profit. And so, we  
10 did it because we had the guaranteed profit and we're a business.

11 But, you know, if you think about our shelf space, it was  
12 never a meaningful part of our network. And even when my  
13 predecessor tried to make us a more balanced network, he failed.  
14 We were a low 60s to mid-60s percent female network even when we  
15 had the maximum amount of poker on the air.

16 JUDGE SIPPEL: But - okay. But what I'm trying to get at  
17 is there's absolutely no reason that you would have shut that down  
18 unless the Justice Department had stepped in.

19 MR. GOLDHILL: What we had done is -

20 JUDGE SIPPEL: This thing was a - this was like the  
21 golden goose.

22 MR. GOLDHILL: Well, because it was starting to get  
23 overexposed, in fact the profit margins were declining. There was  
24 a lot of poker on TV, as you can see from the chart Counsel  
25 referred to, on an enormous number of networks, so some of the

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1 profits were declining.

2 JUDGE SIPPEL: Everybody wanted a piece of this.

3 MR. GOLDHILL: Yes, sir.

4 JUDGE SIPPEL: Yeah, everybody wanted a piece of this.

5 MR. GOLDHILL: It was a prime time infomercial and we're  
6 a profit-making organization, or at least we try to be.

7 JUDGE SIPPEL: See how hard it is to be a government  
8 worker? I can't get in on this stuff. This is great stuff.

9 MR. GOLDHILL: We hadn't known your interest, sir.

10 JUDGE SIPPEL: But nobody picked up the phone and said,  
11 what are you people doing down here?

12 MR. GOLDHILL: No, and it was interesting, if I may, sir,  
13 that at the beginning of this poker boom when people thought this  
14 was legal - this was the first sort of sense that there might be  
15 legal online televised gambling.

16 A lot of people wanted in on this, and it did, to some  
17 extent, turn my predecessor's head away from the core of the  
18 network, but it always was an island on our network.

19 JUDGE SIPPEL: I'm sorry. Go ahead, Mr. Cohen.

20 BY MR. COHEN:

21 Q Mr. Goldhill, does it refresh your recollection if I tell  
22 you, I can get your documents, that poker was not taken off your  
23 network until September of 2011?

24 A I would believe you if documents said that. We may well  
25 have continued - so we had at the end a show called High Stakes

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1 Poker which was regarded as perhaps the best poker show. We had a  
2 loyal audience.

3 I remember discussing that we would run through the rest  
4 of the season. We talked about actually selling that show to other  
5 networks so it could continue to be produced because it had such a  
6 fan base because it was such a good show.

7 Q Okay, and just so we're clear again before we leave this,  
8 because I think we've covered poker, the loyal audience that you're  
9 talking about for the poker programming that was on prime time  
10 Saturday and Sunday night was overwhelmingly men, not women,  
11 correct?

12 A I shouldn't say completely, but overwhelmingly men.

13 MR. COHEN: Okay, let's move to another topic.

14 JUDGE SIPPEL: Let me just finish one more point. I want  
15 to be clear on this. But it's your opinion, and Mr. Cohen is going  
16 to have problems perhaps with this, but it's your opinion that had  
17 you been continuing to carry poker, that you would have been put up  
18 on the sports tier for your business conclusion, whatever it is,  
19 that you have?

20 MR. GOLDHILL: No, sir, I don't think even with poker it  
21 made sense to put us on a sports -

22 JUDGE SIPPEL: No, I don't mean whether it made sense or  
23 not.

24 MR. GOLDHILL: Okay.

25 JUDGE SIPPEL: I mean whether or not the company -

1 MR. GOLDHILL: I don't know the answer to that. I don't  
2 know the justification. We had dropped World Poker Tour my first  
3 year there because we were unwilling to do poker programming that  
4 wasn't completely profitable to us. So we had been decreasing our  
5 - I don't think anyone saw us as the poker network.

6 JUDGE SIPPEL: Okay, I understand your answer.

7 MR. GOLDHILL: Yeah, so I don't know what the -

8 JUDGE SIPPEL: And it was really in September of 2011  
9 that you said that it was canceled. The Justice Department -

10 MR. COHEN: I may have misled you.

11 JUDGE SIPPEL: Go ahead.

12 MR. COHEN: So let me just finish this up by making the  
13 record more accurate.

14 JUDGE SIPPEL: Go ahead. Yes, please.

15 MR. COHEN: Let me show you what's been marked as Exhibit  
16 187, Cablevision 187 in evidence.

17 JUDGE SIPPEL: Thank you.

18 BY MR. COHEN:

19 Q And this is your programming schedule for September 26,  
20 2011?

21 A Yes, sir.

22 Q All right, and at least as of September 26, 2011, you  
23 still were carrying poker, correct?

24 A Yes, you now see that we've now put it on our absolute  
25 weakest night, Saturday night.

1 Q Right, okay, let me go to something else, if I may. Did  
2 you testify under direct - I want to make sure I've got it right.  
3 I'm not trying to put words in your mouth - that the overwhelming  
4 number of your original programming that you developed, the  
5 percentage that you developed since you joined the network, were  
6 aimed at women?

7 A An overwhelming percentage was aimed - of what we have  
8 developed since I joined has been aimed at women. There were some  
9 shows I inherited because development is, as you know, a one-year  
10 cycle or so.

11 Q Sure.

12 A There were shows that I inherited that were more of my  
13 predecessor's philosophy. But clearly from the time I got there  
14 and changed that philosophy, we were aiming for female audiences.

15 Q Okay, and by -

16 A That's all we could sell.

17 Q And was that true by 2009 that you changed the  
18 philosophy?

19 A We changed the philosophy when we hired a head of  
20 programming whose background had been women's entertainment, so by  
21 2009, she was already running development.

22 Q Okay, let me show you Cablevision Exhibit 106, 2010-11  
23 Partnership Opportunities, dated April 29, 2010. This is  
24 Cablevision 106. Let me know when you're there.

25 A I am.

1 MR. SCHMIDT: Mr. Cohen, are these all in evidence or do  
2 they need to be -

3 MR. COHEN: They're all in evidence.

4 MR. SCHMIDT: Thank you.

5 MR. COHEN: Thank you. Your Honor, Cablevision 106.  
6 Hopefully they're in order.

7 JUDGE SIPPEL: I got you.

8 MR. COHEN: I promise.

9 JUDGE SIPPEL: I'm fine.

10 BY MR. COHEN:

11 Q Now, this document on the top, on the front page says,  
12 Mindy Hamilton, VP Strategic Partnerships, do you see that?

13 A I do.

14 Q And she worked in your marketing department at the time?

15 A Yes, sir.

16 Q And she reported then to Ms. Hopkins, correct?

17 A Yes.

18 Q In 2010?

19 A In 2010, yes.

20 Q Ms. Hopkins didn't go to distribution until February of  
21 '11, right?

22 A Right, thank you.

23 Q Okay, now, would you look at Page 3 of 27?

24 A Yes.

25 Q We live to entertain and serve adults 25 to 54, women 25

1 to 54. Do you see that, sir?

2 A I do.

3 Q Is there anything in this document that says that women  
4 are the primary target audience?

5 A The previous page. You'll notice that the overwhelming  
6 bulk of audience members, the two on these pages are both women.

7 Q I'm not asking about the pictures, sir.

8 A You want me to exclude the pictures?

9 Q I would like to focus on the words.

10 (Simultaneous speaking.)

11 Are there any words on this page that say in these  
12 two groups, who you live to entertain and serve, one is primary and  
13 one is secondary?

14 A Well, again, since this would be something delivered into  
15 the industry, what someone in the industry would recognize from Me  
16 Time, Family Fun, Casual, Escape from Everyday Stress, these are  
17 terms used to describe programming that appeals to female viewers.

18 Q Can you answer my question, sir?

19 A I just -

20 Q I don't think that's much to ask.

21 A You asked me if there's anything in the words that  
22 indicated it's a female -

23 MR. SCHMIDT: Objection.

24 JUDGE SIPPEL: Wait a minute.

25 MR. SCHMIDT: I object to the sarcasm. That's not



1 appropriate, Your Honor.

2 JUDGE SIPPEL: Well, in cross examination, I don't think  
3 it's that sarcastic, but don't be so sarcastic.

4 BY MR. COHEN:

5 Q I just - well, this will go faster or slower, it's  
6 totally up to you. It's in your control. I'm asking you questions  
7 that I think can be answered yes or no. You've looked at this  
8 document in preparation for your testimony, have you not?

9 A I believe so, yes.

10 Q Good. Are there any words in this document that say that  
11 the target audience of the network are solely women 25 to 54?

12 Does it in fact say that one of the target audiences is  
13 adults 25 to 54?

14 A It does say that.

15 Q And that was a true statement, was it not?

16 A It's always a true statement.

17 Q Now, let's look at your original programming. Let's turn  
18 to Page 7 of 27. The Newlywed Game, that was on in prime time,  
19 right?

20 A Yes, sir.

21 Q Monday to Friday?

22 A Schedules change, but yes.

23 Q Okay. The target audience, according to this document  
24 that was prepared by a vice president of GSN, was women 25 to 54,  
25 right?

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1 A Yes.

2 Q That was true, correct?

3 A Yes.

4 Q Okay. Turn to the next page. Baggage, right?

5 A Yes.

6 Q Baggage was on in prime time, Monday to Friday, --

7 A Yes.

8 Q -- at the end of 2010?

9 A Mm-hm.

10 Q It says the target audience was adults 18 to 49.

11 A Correct.

12 Q That was true, was it not?

13 A Yes.

14 Q There's a show called Late Night Liars, which you  
15 previewed -- and by the way, let me just ask you this. There's a  
16 difference in the industry, as you put it, between saying that the  
17 target is adults and the target are women, correct?

18 A Yes.

19 Q Okay. Let's go to Late Night Liars, the next page.  
20 That's a show that you launched in June of 2010?

21 A Yes.

22 Q And it's true that the target was adults 18 to 49,  
23 correct?

24 A It's true this document says target 18 to 49.

25 Q Are you saying that this document is a false document?

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1           A     So this is a partnerships document, and it's a sales  
2 document. All it means is that for these shows, those who were by  
3 adults might be willing to do a promotional partnership with us.  
4 It doesn't mean anything other than that.

5           Q     Is the information in this document true or false that  
6 the target of Late Night Liars was adults 18 to 49? Simple  
7 question.

8           A     It is a simple question. I believe I answered it, which  
9 is what we are saying here is we expect that those advertisers who  
10 buy adults will find this show a show that they can do advertising  
11 partnerships on.

12          Q     Let me try my question again, sir, until I get an answer.  
13 Is it a true fact that the target audience of Late Night Liars was  
14 adults 18 to 49?

15               MR. SCHMIDT: Objection; asked and answered.

16               JUDGE SIPPEL: I'll allow. No, I'm overruling that  
17 objection; I want him to get a clear answer.

18               WITNESS: Right. It does say target adults 18 to 49.

19               JUDGE SIPPEL: No, you're saying it says that. That's  
20 not his question. Listen to his question.

21               BY MR. COHEN:

22          Q     Is it true, sir, that the target audience for Late Night  
23 Liars was adults 18 to 49?

24          A     If you're talking -- I don't want to sound argumentative  
25 because I'm trying to avoid being misleading. Let me try to avoid

1 being misleading, which is our network, during this time, was 65  
2 percent females. What these exhibits show is there are some shows  
3 where if you buy adults, you are more likely to buy this show. If  
4 that's what you mean, yes, but it's still a 65 percent female show.

5 Q Mr. Goldhill, I don't know why we're having so much  
6 trouble. I think I'm asking simple questions.

7 MR. SCHMIDT: Object to the lawyer commentary, Your  
8 Honor.

9 MR. COHEN: Let me finish this.

10 JUDGE SIPPEL: I hear you. Just ask him the question  
11 again.

12 BY MR. COHEN:

13 Q Is it true --

14 JUDGE SIPPEL: Please answer the question.

15 BY MR. COHEN:

16 Q -- that the target audience for Late Night Liars was  
17 adults 18 to 49?

18 A You seem to be looking for a yes, so I will give you a  
19 yes because that is what it says here. I've tried to explain what  
20 it means. It feels like that qualification isn't useful to you, so  
21 let's say yes.

22 Q Is it true -- going back to the prior page, so we don't  
23 have any ambiguity -- that the target audience for Baggage, which  
24 was one of your prime time shows, was adult 18 to 49?

25 A Yes; I don't recall that.

1 Q You don't recall that?

2 A No. I don't recall our expecting gender balance on  
3 Baggage at all. Baggage has, as you know, historically been almost  
4 all women.

5 Q So you think that this is wrong?

6 A I think, as I mentioned when you asked me, the head of  
7 partnerships was looking for advertisers who buy adults, not just  
8 advertisers who buy women. And I don't know how else to express  
9 that to you. This is not an internal document. This is a document  
10 for partnership marketing.

11 Q Wait a second. When you say it's not an internal  
12 document, it's a document produced by the Game Show Network,  
13 correct?

14 A Yes.

15 Q And the name of the person on the front page of this  
16 document that you say is not an internal document was your vice  
17 president of strategic partnerships, correct?

18 A Yes.

19 Q And you're saying that when she put out a document that  
20 said that the target audience for Baggage was 18 to 49 adults, that  
21 was just wrong?

22 A I didn't say that.

23 Q Okay, then let's try again.

24 JUDGE SIPPEL: That's what the A means. The A means  
25 adults, correct?

1 MR. COHEN: Correct.

2 BY MR. COHEN:

3 Q Was the target audience for Baggage adults 18 to 49?

4 A So I answered that as saying I recall it being strictly  
5 women.

6 Q Let me show you another document, which is Exhibit 612,  
7 Brookstone Partnership Proposal, February 24, 2010.

8 MR. COHEN: We've just branded it, Your Honor. It's got  
9 a high number so we wouldn't get involved; it's Cablevision 612.

10 BY MR. COHEN:

11 Q Would you take a look at this document?

12 JUDGE SIPPEL: What's this?

13 MR. COHEN: This is not in evidence, Your Honor.

14 JUDGE SIPPEL: You want to move it in?

15 MR. COHEN: I am going to move it after asking some  
16 questions.

17 (Whereupon, the above-referred to document was marked as  
18 Cablevision Exhibit 612 for identification.)

19 JUDGE SIPPEL: This room has gotten bigger.

20 SPEAKER: Pardon?

21 JUDGE SIPPEL: This room has gotten bigger.

22 MR. COHEN: Yes.

23 BY MR. COHEN:

24 Q Now, you see that this is a partnership proposal that GSN  
25 made to Brookstone on February 24, 2010?

1 A I do.

2 Q All right. And you're not disputing that this was  
3 produced? You see the little Bates number out of the GSN files?  
4 You know those came out of your files, right?

5 A I would assume so.

6 Q Okay. Now would you look, please, at Page 4 of 10, GSN  
7 viewer who lived to entertain and serve adults and women, correct?

8 A Yes.

9 Q True statement, correct?

10 A This is the same page.

11 Q Okay. Now let's turn to Page 8 of 10. This is the  
12 proposal for Baggage. Do you see that, sir, a partnership proposal  
13 to Brookstone, correct?

14 A Yes, I'm sorry --

15 Q 8 of 10.

16 A 8 of 10.

17 Q It's a little hard to read down in the corner.

18 A Yes, I see it now.

19 Q Okay, show description, Baggage is television's most  
20 revealing dating show, and everybody's got some. True statement?  
21 It's a dating show?

22 A It is a dating show, yes.

23 Q Here it says target adults 25 to 54, right?

24 A Yes.

25 Q Okay. Now sir, isn't it a fact that GSN was marketing

1 Baggage to partnership partners as a show that had a target  
2 audience to adults?

3 A Yes.

4 Q And you're saying that was a false representation to the  
5 advertisers?

6 A No, I'm not saying that at all. I'm saying something  
7 completely different, and perhaps I haven't been clear. There are  
8 advertisers who buy only women. There are advertisers who prefer  
9 to buy adults or persons. We will sell to both. What we won't  
10 sell is men.

11 Q I understand that.

12 A But for us, women are 65 to 70 percent of our adults.  
13 Many advertisers who buy adults are trying to get primarily women  
14 -- this is what I was trying to explain before -- but what they buy  
15 are adults. There's a difference between the target, when we make  
16 a show for an audience, and our willingness to sell to an  
17 advertiser. If an advertiser walks in and says, "We want you to  
18 price adults," we will do so. There are some shows which are so  
19 overwhelmingly female that we cannot do that because the number is  
20 the same as the female number.

21 This is what I've been trying to explain since you asked  
22 me this line of questions. When it says the target is adult 25 to  
23 54, what it means is an advertiser who buys women or an advertiser  
24 who buys adults can find this an effective partnership opportunity.  
25 You will notice there are no male demos ever referenced in here.



1 Adults for us are always women. You just have to look at our  
2 numbers.

3 Any advertiser who seriously bought on this document  
4 would know we are a 65 to 70 percent female network. It's not like  
5 these are hidden numbers.

6 Q Mr. Goldhill, we're going to go through those now.

7 A Okay, but that's why I've had trouble with your question  
8 because you're using the word "target" incorrectly.

9 JUDGE SIPPEL: Wait a minute, it says "target" right  
10 there.

11 WITNESS: But of course, this is -- sir, this is within  
12 the profession. This is from a television network to an advertiser  
13 who understands the technical meaning. You are asking me a  
14 different meaning, I think, in trying to make this a general word.  
15 It's not.

16 JUDGE SIPPEL: So let me ask you this question then.  
17 This is being pitched to a partnership -- an advertising  
18 partnership?

19 WITNESS: Yes, these would be for what are called  
20 value-add advertisers. So they buy, and they also --

21 JUDGE SIPPEL: I just want to get the word. Is this  
22 particular partnership, are they -- did they have a problem with  
23 calling women a target in your sense of the term? Did they have a  
24 problem with that?

25 WITNESS: They don't have a problem. There are some

1 advertisers who buy only persons. There are some who buy only  
2 women. There are some who buy only men, and there are some who buy  
3 all three. And all we are saying here is that these shows are not  
4 -- we will not do just women-only deals. We will also do adults.  
5 What I'm trying to get across, and I think I'm doing a poor job, is  
6 that anyone receiving this already knows we're 65 percent female,  
7 and we deliver females. The question they're asking is: do you  
8 also deliver adults? It's different from what you're asking.

9 BY MR. COHEN:

10 Q Mr. Goldhill, you're not 65 percent females in 2010 for  
11 adults 25 to 54, are you? You're not.

12 A Since I have been at this -- well I'd have to go look at  
13 the exact ratings for that exact period, but what I can tell you is  
14 since I have been at this network, we have never been below 63  
15 percent female for any quarter. We have averaged 68 percent  
16 female, and we have always ranged between 63 percent and 70. There  
17 is not an advertiser who buys us who doesn't know those numbers.  
18 And so the concern I had in this discussion is that there's no one  
19 receiving this who doesn't already know that.

20 Q Mr. Goldhill, are any of the numbers that you just  
21 volunteered in your last answer restricted to 25 to 54 year olds?

22 A Oh, they were total this.

23 Q Yes, and 25 to 54 year olds, in 2010, you were virtually  
24 50/50, correct?

25 A Incorrect.

1 Q Okay, we'll show you the numbers, but the answers that  
2 you were giving about 65 percent and 63 percent, that was the  
3 entire day, irrespective of age, correct?

4 A That was the entire day.

5 Q Right, and these partnership documents focus on 18 to  
6 49-year-old demographics and 25 to 54-year-old demographics,  
7 correct?

8 A And on prime time shows.

9 Q Correct.

10 A So the numbers for prime time --

11 Q Mr. Goldhill, please --

12 A Would you like those? No?

13 Q No. I think you could try to stay with my questions.

14 A I apologize.

15 Q I think it'll be easier.

16 MR. SCHMIDT: Object to the lecture.

17 MR. COHEN: Offer 612 into evidence, Your Honor.

18 JUDGE SIPPEL: Objections?

19 MR. SCHMIDT: No objections, Your Honor.

20 JUDGE SIPPEL: It's in.

21 BY MR. COHEN:

22 Q Now, when you promised adults to an advertiser, you have  
23 to deliver a certain number of adults, correct? Men count, do they  
24 not?

25 A They do in those, yes.

1 Q Yes, and when you sell women to an advertiser, only the  
2 women count?

3 A Correct.

4 Q So if you go back to the Newlywed Game on Page 7 of 27 of  
5 Exhibit 106, if somebody buys advertising on women on that show,  
6 you guarantee a certain number of women, correct?

7 A Correct.

8 Q Now turn please to the next page, to Baggage. If  
9 somebody buys adults 18 to 49, and if you have a freak quarter in  
10 which the number of men and women flip, but you deliver the  
11 promised number of adults, you've met your promise, right?

12 A If they bought adults, yes, sir.

13 Q If they bought adults, and that's the difference between  
14 buying adults and buying women, correct?

15 A Yes, sir.

16 Q When you buy adults, you don't guarantee a specific  
17 number of women, just people, right?

18 A Correct.

19 Q Turn to the next page, Catch 21, 10 of 27. Target,  
20 adults 25 to 54. True, correct?

21 A That's what it says; yes, sir.

22 Q Is it true?

23 A I'm going to try to explain this again. And I think at  
24 this point, you're not trying to understand what I'm saying. On  
25 this show, we will do either women 25 to 54 or adults because we

1 can price both. Everyone knows we sell women. When we are  
2 explicit about women, we're saying there's no way to do adults.  
3 We're not saying what you're implying we're saying. We're saying  
4 the opposite of what you're implying.

5 And that's why I'm trying to give an accurate answer.  
6 Internally, we would never talk this way, right? Internally, the  
7 way we talk about is the women audience we deliver. We are  
8 willing, if someone wants to buy people, to sell people, but there  
9 are many shows, such as the Newlywed Game, for which you could  
10 never sell people because the audience is 75 to 80 percent female.  
11 For example, Catch 21, the example you gave, most of the sales we  
12 did were women 25 to 54. We were willing to adults 25 to 54;  
13 that's all this says. I know you think I'm just not answering your  
14 question, but I am actually trying to make sure it's not misleading  
15 because it assumes that you're dealing with a sophisticated  
16 advertising audience that knows exactly what you're saying. And  
17 you're sort of using shorthand as being inclusive, when it's not.

18 Q The shorthand is the shorthand in your document, correct?

19 A To an advertiser.

20 Q And to meet your commitment to those advertisers, when  
21 you sell adults, it makes no difference how many men and how many  
22 women you deliver, correct? Can you answer that yes or no?

23 A Yes, that's only technically true, but yes.

24 Q He Said/She Said, that's the next slide, Slide 11 of 27.  
25 You're just going to accept the target was women, right?

1           A     We didn't do that show, so I don't know if we could sell  
2 adults. We didn't actually make that show.

3           JUDGE SIPPEL: It says W 25 to 54.

4           WITNESS: Correct. So for these partnerships, we would  
5 only have done women partnerships.

6           BY MR. COHEN:

7           Q     The next show, Life at Stake, did you ever launch that,  
8 Slide 12?

9           A     No.

10          Q     Okay. But the target was adults when you were  
11 contemplating it, correct?

12          A     I honestly don't remember the show.

13          Q     How about Shafted? It says target adults 25 to 54. Did  
14 you ever launch that?

15          A     We did not.

16          Q     And you don't remember whether it's accurate, where it  
17 says the target for Shafted was adults 25 to 54?

18          A     I don't remember the show.

19          Q     How about the next show, Vegas 24/7?

20          A     That's not a show we did.

21          Q     Let me just ask the question.

22          A     I'm sorry.

23          Q     It's on Slide 14. The target audience was 25 to 54, but  
24 you didn't launch it, right?

25          A     That's right.

1 Q It was not intended to be a women's targeted show?

2 A I don't remember the show.

3 Q Now GSN Live, the next slide, 15, women 25 to 54, you did  
4 launch that, correct?

5 A Yes, sir.

6 Q Don't you know that you also marketed this show to  
7 advertisers and partners as having a target audience of adults, as  
8 well as women?

9 A As I've said several times, anything we sold as women, we  
10 would be willing to sell as adults, and vice versa. But there are  
11 some shows that do so few men that there's fundamentally no  
12 difference between buying adults and buying women.

13 Q Okay. But in this proposal, in this deck, the target on  
14 GSN Live is women 25 to 54, right?

15 A For these partnerships, yes.

16 Q Let me show you a partnership integration proposal to  
17 LA.com, which we've marked as Cablevision Exhibit 613.

18 (Whereupon, the above-referred to document was marked as  
19 Cablevision Exhibit 613 for identification.)

20 Q 613 is dated August 17, 2010.

21 A Yes.

22 Q And would you turn, please, to Page 9 of 12? This is  
23 about Baggage.

24 A Okay.

25 Q Do you see that?

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1 A I'm not there yet. I'm there.

2 Q Turn to the next page, 10 of 12. It's a show called 1  
3 vs. 100. Do you see that?

4 A Yes.

5 Q One contestant against a mob of 100 people.

6 A Yes.

7 Q That's a show that was on first on a broadcast network,  
8 and then later it was produced by you, right?

9 A Yes, sir.

10 Q Target adults 25 to 54, right?

11 A Yes.

12 Q True?

13 A The show did overwhelmingly women.

14 Q Is it a true statement that the target for advertisers  
15 was adults 25 to 54?

16 A As I said before, if you bought adults 25 to 54, we would  
17 sell to you. We are a profit-making business; we don't turn  
18 business away. But those audiences were 65 percent female, and  
19 anybody reading this would know that.

20 Q Do you think, based on your sense -- you comment about WE  
21 in your statement, did you not?

22 A I do.

23 Q And let's just look at it for a second.

24 JUDGE SIPPEL: Where are you going now?

25 MR. COHEN: Paragraph 10 of his statement, and Paragraph



1 11 of his direct testimony, Your Honor. Let me, before I do that,  
2 offer 613.

3 JUDGE SIPPEL: Any objections?

4 MR. SCHMIDT: No objections, Your Honor.

5 JUDGE SIPPEL: 613 is in.

6 BY MR. COHEN:

7 Q In Paragraphs 10 and 11, you talk about WE and the kinds  
8 of schedule that WE has, right?

9 A Yes.

10 Q Do you know whether WE has any marketing partnerships  
11 that target adults, as opposed to women?

12 A I would not know.

13 Q You don't know that?

14 A I would not know that.

15 Q Do you know whether Lifetime or any of the other networks  
16 that are in your competitive set target adults, as opposed to  
17 women?

18 A It would be difficult --

19 Q Let me finish.

20 A Oh, forgive me; I'm sorry.

21 Q Now you can answer.

22 A Just the last word I stepped on. It'd be difficult for  
23 me to believe, based on my experience in the business, that any  
24 female-oriented network would not be willing to price adult  
25 business, since a decent amount of consumer product business is

1 priced in terms of adults. So like us, those networks are  
2 overwhelmingly female in audience, but like us, I would be certain  
3 there are advertisers who express their prices in adults.

4 Q But you don't know, correct?

5 A I don't know of a network that doesn't take adults. It  
6 is possible the ones you mentioned are ones that I don't know. But  
7 again, in the business, it's not the network that determines what  
8 the advertiser prices on; it's the advertiser. It would be a  
9 strange network that said to an advertiser, "Sorry, you price on  
10 the basis of adults, not women. We refuse to take your money."  
11 And what you see in these presentations is our saying, "If you want  
12 to buy on the basis of adults, we will sell to you on the basis of  
13 adults."

14 Q Can you go back to Cablevision Exhibit 151, your schedule  
15 of December 6, 2010? I just want to run through your Monday to  
16 Friday prime time schedule.

17 A What am I looking at? I'm sorry, tell me the --

18 Q Sure. Yes, Cablevision Exhibit 151.

19 MR. COHEN: It's in the book, Your Honor, 151.

20 JUDGE SIPPEL: I know.

21 MR. COHEN: I'm sorry.

22 JUDGE SIPPEL: Just checking another place; I got it.

23 BY MR. COHEN:

24 Q This is the December 6, 2010 programming schedule, right  
25 at the time that you got the retiering news from Cablevision,

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1 right?

2 A Yes.

3 Q Let's just focus on prime time because it's a long day.  
4 Monday to Friday, at 7:00, you showed 1 vs. 100, correct?

5 A Yes.

6 Q Game show?

7 A I --

8 Q Is it a game show?

9 A It is a game show.

10 Q At 7:30, you showed Deal or No Deal. Is it a game show?

11 A It is.

12 Q Is 1 vs. 100 a relationship game show?

13 A It is not.

14 Q Is Deal or No Deal a relationship game show?

15 A It is not.

16 Q At 8:00, you put on Family Feud, and at 8:30, Family  
17 Feud?

18 A Yes.

19 Q Game shows, right?

20 A Yes.

21 Q It's not a relationship game show, is it?

22 A It's not a dating show, I think is what you're asking.

23 Q It's not a show about women, is it?

24 A It's a show about families.

25 Q It's a show about men and women, right?

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1           A     It's a show about families. I mean, your expert is a  
2 television person here. Family Feud is a show about families,  
3 disguised as a game show, which is why it works so well. It's a  
4 very heavily female-oriented show because it's about families.

5           Q     But just to stay with disguised as a game show, there are  
6 contestants, correct?

7           A     There are contestants.

8           Q     There's a host, right?

9           A     There's a host.

10          Q     And they win prizes, right?

11          A     And you win prizes.

12          Q     Okay, and at 9:00 is the Newlywed Game we discussed,  
13 right?

14          A     Mm-hm.

15          Q     That's a game show, correct?

16          A     The Newlywed Game, again, is about marriages, but it's in  
17 the form of a game show, yes.

18          Q     Contestants, prizes and winners?

19          A     Yes.

20          Q     And a single host, correct?

21          A     A single host, yes, sir.

22          Q     At 9:30 is Baggage, game show, right?

23          A     You win a date, so it is a traditional dating show.

24          Q     With a prize?

25          A     The prize is the date.

1 Q And contestants?

2 A And contestants, yes.

3 Q And a host?

4 A And a host.

5 Q And at 10:00, 1 vs. 100. I think we've already discussed  
6 that. And at 10:30, you had Lingo?

7 A Yes.

8 Q That's a game show, correct?

9 A That's a game show.

10 Q And not a relationship show, correct?

11 A Yes.

12 Q Okay, you can put that down. Now in Paragraph 7 of your  
13 testimony -- can you turn back to your testimony, sir? You talk  
14 about a show called Love Triangle, correct?

15 A Yes.

16 Q Love Triangle was not on the air, was it, at the time  
17 that you were retiered by Cablevision?

18 A I don't know the answer to that.

19 Q Okay, let me see if I can help you out. Let's look at  
20 151 again. That's the December 2010 --

21 A Oh, I'm sorry, you mean was it on the schedule at the  
22 point, or had it been on the schedule? I'm sorry. I misunderstood  
23 you.

24 Q Was it on the schedule?

25 A It's not on this -- it's not on the December schedule.

1 I'm sorry.

2 Q It was launched in April of 2011, was it not?

3 A Yes.

4 Q Okay, so the Love Triangle, which you discuss in  
5 Paragraph 7, is a show that was not yet launched at the time the  
6 retiering decision was communicated to you, correct?

7 A I'm sorry, it launched in April 7 of 2011.

8 Q It launched in April 7 of 2011. Do you not remember  
9 that?

10 A I don't remember when every one of our shows launched.

11 Q Okay, let me help you out.

12 A I have no reason to disbelieve you.

13 Q Let's just -- let's get it right, sir.

14 JUDGE SIPPEL: Well, he's accepting your representation.

15 BY MR. COHEN:

16 Q Okay. I'm looking at a press release -- the press  
17 release GSN issued would be correct, right?

18 MR. SCHMIDT: Objection, foundation.

19 JUDGE SIPPEL: Well, the question's already been asked  
20 and answered.

21 MR. SCHMIDT: I think it has, Your Honor. That's my  
22 point.

23 JUDGE SIPPEL: You have your date established as April  
24 2011 with respect to Love Triangle.

25 BY MR. COHEN:

1 Q Love Triangle was a show that was launched after the  
2 retiering decision was made by Cablevision, correct?

3 A Based on what you said, yes. It had been announced well  
4 before. Based on what you're saying, the show actually showed on  
5 the air then.

6 Q How long did it last, one season?

7 A We cancelled it after one season.

8 Q You talked about cancelling Drew Carey's show in response  
9 to Mr. Schmidt's questions.

10 A Yes.

11 Q They were launched at the same time, were they not?

12 A They were.

13 MR. SCHMIDT: Objection, Your Honor. This is something  
14 he specifically objected to and had stricken. It's not fair to  
15 object to something I ask and --

16 MR. COHEN: It was overruled.

17 MR. SCHMIDT: No, I think this was actually sustained.

18 JUDGE SIPPEL: What --

19 MR. SCHMIDT: If it was overruled, though, I withdraw my  
20 objection.

21 MR. COHEN: I'll withdraw my question then. Okay, I  
22 withdraw my question. I withdraw my question.

23 BY MR. COHEN:

24 Q I'm going to show you another partnership document, sir.  
25 Look at Exhibit 173.

1 JUDGE SIPPEL: Exhibit 173?

2 MR. COHEN: CV 173.

3 JUDGE SIPPEL: 173.

4 MR. COHEN: Yes.

5 BY MR. COHEN:

6 Q Sir, would you -- you can look at any part of this you'd  
7 like, but why don't you look at -- what I want to focus on is 9 of  
8 17.

9 A Mm-hm.

10 Q We discussed Lingo. That was another one of your prime  
11 time shows, right?

12 A Yes.

13 Q It says the target was adults 25 to 54?

14 A Persons, 60/40, female/male split.

15 Q I'm looking at the bottom, sir, that says target adults  
16 25 to 54. Is that a true statement?

17 A It's exactly what I said before, true, and as it says, a  
18 60/40 split, as I represented to you before, is what that means.

19 Q Okay.

20 A This page, I think, explicitly puts them both together in  
21 a way that maybe I should have been clearer about. It says targets  
22 adults 25 to 54, which means a 60/40, female/male split. This is  
23 exactly what I've been very poorly trying to get across to you.

24 Q Let's talk about presentations the Game Show Network, or  
25 GSN, has made to distribution partners, like cable operators and



1 the like. You looked at one for Cox, right?

2 A Yes, sir.

3 Q Would you look at Cablevision Exhibit 50, which is a  
4 presentation made to Comcast?

5 MR. SCHMIDT: I apologize for this, Your Honor, what  
6 number?

7 MR. COHEN: Pardon?

8 MR. SCHMIDT: What number?

9 BY MR. COHEN:

10 Q This is a document we looked at at your deposition. Do  
11 you remember? 50, sir.

12 A I know. I'm just not there yet.

13 Q No, take your time.

14 A I don't think --

15 Q I hope it's in your book. It's in mine. The one that --

16 A Mine are a little out of order. Give me a minute.

17 Q The one in front of it is 12, and then the second one is  
18 50.

19 A I have 12 going to -- oh, I found it. I'm sorry.

20 Q It's a lot of paper.

21 A That's all right; I found it.

22 JUDGE SIPPEL: I beat you to it, so better speed it up a  
23 little bit.

24 WITNESS: Sorry, Your Honor.

25 BY MR. COHEN:

1 Q This is a presentation that was made to Comcast --

2 A Yes.

3 Q -- in January of 2009, right? And by 2009, you'd been on  
4 the job for a while at GSN?

5 A Yes, a year and change. This would be about roughly a  
6 year and a half.

7 Q Turn to the second page of the Comcast presentation.

8 A Mm-hm.

9 Q GSN is the only TV network devoted exclusively to games.  
10 Do you see that, sir?

11 A Yes.

12 Q That was a true statement in 2009, correct?

13 A Absolutely.

14 Q In fact, it's a true statement in 2010?

15 A Absolutely.

16 Q And a true statement in 2011?

17 A It's a true statement up to, I think, two months ago.

18 Q Up until two months ago?

19 A Yes.

20 Q So from the time you joined the network until two months  
21 ago, GSN was the only TV network devoted exclusively to games?

22 A Mm-hm.

23 Q You said until two months ago because a new network named  
24 Buzzr has launched, correct?

25 A Yes, sir.

1 Q Not because you've changed your focus away from games?

2 A Well, no. We continue, as I believe I testified, to use  
3 the competitive DNA in absolutely everything we do.

4 JUDGE SIPPEL: Sorry.

5 WITNESS: Please let that not be mine.

6 JUDGE SIPPEL: No, it's not yours. Okay, sorry.

7 BY MR. COHEN:

8 Q Turn to Page 4 of 31. GSN is home to the best game  
9 shows, delivering a loyal, broad-based audience. Game shows  
10 deliver the largest audience for broadcast networks and offer  
11 family friendly programming with wide audience appeal. True  
12 statement?

13 A Yes.

14 Q True statement after 2009?

15 A That game shows offer large audience for broadcast  
16 networks? I don't know about that statement. I don't know if  
17 that's still correct. The second half of it for traditional game  
18 shows is still true, I think.

19 Q And game show still has -- GSN had wide audience appeal  
20 in 2010, did it not?

21 A I'd like to think we did.

22 Q And in 2011?

23 A I'd like to think we've always had wide audience appeal.

24 Q Would you look, please, at Cablevision Exhibit 52? And  
25 that's a presentation to, strangely enough, to Cablevision. Do you

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1 see that, sir?

2 A It's upside-down.

3 Q I apologize for that.

4 MR. COHEN: It's the upside-down exhibit, Your Honor, 52.

5 JUDGE SIPPEL: 52?

6 MR. COHEN: Yes, sir. It'll be right after 50, and  
7 you'll have to, unfortunately, turn your book around.

8 JUDGE SIPPEL: Now you're really challenging us.

9 MR. COHEN: There we go.

10 BY MR. COHEN:

11 Q Do you know why a presentation was made to Cablevision in  
12 February of 2009?

13 A I don't.

14 Q Don't you know that there were discussions between  
15 Cablevision and GSN about a new carriage deal in February of 2009?

16 A I know there were some discussions at some point; I don't  
17 know it was February of 2009.

18 Q When you testified, in response to Mr. Schmidt's  
19 questions, that Cablevision wouldn't meet with you, didn't you know  
20 that Mr. Gillespie had met with Cablevision in February of 2009?

21 A I'm sorry, by meeting with me, I meant me. So  
22 Cablevision was the only affiliate that was not willing to meet  
23 with me.

24 Q Who did you call?

25 A I had Mr. Gillespie call.

1 Q No, who did you call at Cablevision, and who turned you  
2 down?

3 A So Mr. Gillespie had said to me that it was a bad idea  
4 for me to call, that they had said they would rather not have such  
5 meetings, and that our carriage could be at risk if we pushed it.

6 Q Did you ever make a phone call prior to December of 2010  
7 and ask for a meeting with Cablevision, yes or no?

8 A I just said I did not.

9 Q Did you ever write a letter or an email to Cablevision  
10 prior to 2010 and ask to meet with them?

11 A Not that I recall.

12 Q Is there anything in this 2009 presentation that GSN made  
13 to Cablevision that says anything, in words, about being a women's  
14 network?

15 A It seems to be very focused on our online business, so it  
16 doesn't seem to talk much about the television business.

17 Q Why don't you look, please, at Page 5 of 15, a  
18 substantial increase in original programming? Do you see that?

19 A That does seem to be the only thing on here that's about  
20 television.

21 JUDGE SIPPEL: We're still on 52, right?

22 MR. COHEN: 52, 5 of 15, Your Honor.

23 WITNESS: This does look like a pitch from the dot com  
24 business.

25 BY MR. COHEN:

1 Q Do you know that?

2 A Well it's just everything about here is about online  
3 activity. Except for that page -- I have not looked through this,  
4 but except for that page, I'm not seeing that -- and it's about  
5 cash competition and loyalty programs that we were doing online,  
6 prizing that we were doing online, casual games that is entirely  
7 online, just in dot com. I'm just running through the pages now.

8 Q Go back to Page 5.

9 A So Page 5 is the only one that lists our programming.

10 Q It's substantial programming. You testified that you  
11 thought that poker programming was out of step with your  
12 programming philosophy, correct?

13 A Yes, sir.

14 Q But what you told Cablevision in 2009 is that one of your  
15 original poker shows was High Stakes Poker, correct?

16 A Yes.

17 Q That was the one that was still on the air in 2011,  
18 right, the one we looked at in prime time?

19 A Yes.

20 Q Then you listed something called Poker Stars: Caribbean  
21 Adventure. Did you ever launch that?

22 A I would have to go back and look, but that, I believe,  
23 was a one-season, essentially, time-buy.

24 Q In 2009?

25 A It would be about that period, yes. That was one of the

1 shows that was paid for by an offshore site.

2 Q Then there was something called the World Poker Tour.  
3 That's something that you had on your network, correct?

4 A That is something I actually cancelled from the network.

5 Q In what year?

6 A I cancelled it in '09 or '10. The renewal was at '09, if  
7 I remember right. It may have actually even been as early as '08.  
8 But World Poker Tour was the only one we were not in profit by  
9 putting it on the air. It was an actual true, real television  
10 program.

11 Q But three of the shows that a female skewing network  
12 presented to Cablevision in February of 2009 were about poker, your  
13 original shows, right?

14 A There are three shows on the list that are about poker,  
15 yes.

16 Q Look at Exhibit 81, please, next tab, and go back to the  
17 right order in the book.

18 MR. COHEN: Your Honor, we'll replace those pages for  
19 you, so you don't have to turn the book.

20 JUDGE SIPPEL: Oh, I can do it.

21 MR. COHEN: Okay. And for you.

22 JUDGE SIPPEL: Now what number are we on?

23 MR. COHEN: 81.

24 JUDGE SIPPEL: 81?

25 MR. COHEN: Right.

1 JUDGE SIPPEL: Oh, yes; I got it.

2 MR. COHEN: Okay?

3 JUDGE SIPPEL: Yes.

4 BY MR. COHEN:

5 Q Presentation to DISH Network, dated November 11, 2009.

6 Do you see that, sir?

7 A I do.

8 Q We went through this at your deposition, right? That's  
9 why it says Goldhill 3.

10 A Is that what it says? Okay.

11 Q And DISH Network, in 2009, were they your second-largest  
12 distributor?

13 A That does sound right.

14 Q Okay. And turn to Page 4 of 10. Giving viewers what  
15 they want -- you with me?

16 A I am.

17 Q --- are signature originals and acquired game shows  
18 continue to deliver large audiences and offer family friendly  
19 programming with wide audience appeal, correct?

20 A Yes.

21 Q True statement, correct?

22 A Yes.

23 Q Your programming delivered large audiences?

24 A It's a sales document, in our opinion.

25 Q Is there anything on this page, or anything else on any



1 other page of this presentation to DISH Network that says that your  
2 programming is focused on topics of interest to women?

3 A As you mentioned, this is our second-largest distributor.  
4 They know we're 65 percent female audience. What was interesting,  
5 and what's been an important part of our strategy with DISH, is  
6 that the programming is family friendly, which means Mom can watch  
7 with kids. That's what that means. Again, this is the difference  
8 between phrases we use in the industry, having industry  
9 conversations, and common use.

10 Family friendly does not mean Dad; it means Mom and kids.  
11 For DISH, which regards itself as having a fairly mainstream,  
12 conservative viewership, this was a valuable point to make. And it  
13 is for many of the networks. It was the way we were  
14 differentiating ourselves. As you know, many of the other  
15 female-oriented networks are much less family friendly.

16 Q Look at Exhibit 109, sir. It's another presentation to  
17 DISH in June of 2010. See that, sir?

18 A I do.

19 Q Look at Page 9 of 15. I'm going to wait for the judge,  
20 9 of 15.

21 JUDGE SIPPEL: 9 of 15.

22 MR. COHEN: 9 of 15 on 109. This is the --

23 JUDGE SIPPEL: 109, okay.

24 MR. COHEN: We'll wait for you, Judge.

25 JUDGE SIPPEL: Okay. Well thank you. Not many people

1 tell me that these days. Let me see, 109, and the page is --

2 MR. COHEN: 9 of 15.

3 JUDGE SIPPEL: -- 9 of 15, okay.

4 BY MR. COHEN:

5 Q GSN viewers are, do you see that, sir?

6 A I do.

7 Q Heavy TV viewers, correct statement?

8 A It is correct, yes.

9 Q Loyal to GSN, correct statement?

10 A Yes.

11 Q Multimedia-centric, correct statement?

12 A Multimedia-centric, I'm not sure that's a statement. The  
13 numbers would be the correct statements there, based on whatever  
14 source was used.

15 Q And 48 percent male and 52 percent female, correct?

16 A That is what it says, yes.

17 Q You submitted a document to your -- June of 2010, let me  
18 get it right -- your second-largest distribution partner?

19 A Yes.

20 Q That said that your audience for your female skewing  
21 network was 52 percent female and 48 percent male.

22 A Oh, okay. Forgive me, you're not understanding those  
23 numbers.

24 Q I'm not -- what am I not understanding about this?

25 A These are what are called MRI panel numbers. What MRI

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1 panel does is it essentially looks at anybody who watched your  
2 network, not how much. If I may give you a math example?

3 Q Please don't, sir. Okay? Did you represent to DISH and  
4 other distributors that according to MRI, your audience was 52  
5 percent female and 48 percent male? This is not the only document,  
6 is it?

7 A So the MRI data, which is -- I'd love, at some point, to  
8 explain -- does not show viewership, but it is correct that MRI  
9 data shows all television as more male, younger, richer, and is  
10 used by cable companies in selling their direct response ads. This  
11 is not how we ever represent ourselves to our advertisers. As you  
12 know, during this period of time, GSN was 60 percent plus female in  
13 viewership, and that's a specific methodology that again, in the  
14 industry, we all understand this methodology. If you're not in the  
15 industry, you don't know what this means.

16 Q Would you say you don't represent yourself to advertisers  
17 that way?

18 A Not to our advertisers, correct. So our cable -- as you  
19 know, the cable companies sell some of our time on their own  
20 behalf. They, at this time, sold direct response advertising.  
21 Direct response advertising sometimes is sold on MRI numbers, but  
22 all of our advertising is sold on Nielsen numbers.

23 Q Turn to Cablevision 95 in your book, sir.

24 JUDGE SIPPEL: For my benefit, what does MRI mean?

25 WITNESS: So MRI is a survey done on what's called a

1 panel.

2 JUDGE SIPPEL: What do the initials stand for, MRI?

3 WITNESS: I think it's media research.

4 MR. COHEN: Media reports or media research, one or the  
5 other.

6 WITNESS: I think it's research is the second one. I  
7 can't remember what the I is. It's intelligence, or it's something  
8 like that.

9 JUDGE SIPPEL: All right, good enough.

10 WITNESS: But it's not -- advertisers don't buy on MRI.  
11 It's very important to understand what it's saying which, again,  
12 the recipient of this document would.

13 JUDGE SIPPEL: I've been educated enough. Let's go.

14 BY MR. COHEN:

15 Q Mr. Goldhill, turn to --

16 MR. COHEN: Let me just get this one question, Your  
17 Honor. I know it's 6:00.

18 BY MR. COHEN:

19 Q -- 95. Would you look at that, please?

20 A Tab 95?

21 Q Tab 95, CV 95. This is what's called, in your business,  
22 a one sheet, correct?

23 A Yes.

24 Q And this is something that you present to your  
25 advertisers, correct?

1 A No.

2 Q Promotional partners?

3 A No. So you see the lower right-hand corner, where it  
4 says, "insert your logo here"?

5 Q Mm-hm.

6 A This is what I referred to before. This is where our  
7 affiliates use this one sheet for their own sales.

8 Q Right.

9 A We don't use this for our sales.

10 Q What's the gender breakdown in the information that you  
11 provide to your affiliates?

12 A So this is also MRI, and it's too small for me to read.

13 Q 53 --

14 A Oh, 53/47. I see.

15 Q So your testimony, sir, is you put out all of this  
16 information to affiliates that doesn't reflect -- I want to  
17 understand -- doesn't reflect the actual audience of your network?  
18 Is that so?

19 MR. SCHMIDT: Objection, Your Honor.

20 JUDGE SIPPEL: Wait, now, just a second. What's the  
21 objection?

22 MR. SCHMIDT: Mischaracterizes what he said. Purported  
23 to characterize his testimony on direct.

24 JUDGE SIPPEL: Try it without characterizing it, please.

25 BY MR. COHEN:

1           Q     Is it your testimony that the information in Exhibit 95,  
2 and in the DISH exhibit I showed you, misrepresents your audience  
3 skew?

4           A     My answer was it's MRI data, which again, people in the  
5 industry know how it's done, know what it means. Our advertisers  
6 buy exclusively on Nielsen. We present exclusively on Nielsen.  
7 Our cable partners, in their own sales efforts, like MRI data, so  
8 we have given it to them in the past. But beyond that, we don't  
9 use it.

10           JUDGE SIPPEL: Wait a minute. What do you mean beyond  
11 that, you don't use it?

12           WITNESS: The reason this document says "insert your logo  
13 here" is because our affiliate partners sell some of the time on  
14 our air. They sell it in direct response, so they don't guarantee  
15 demographics. They like, frankly, to sell the best story they can.  
16 MRI always tells a much different story from Nielsen. And they ask  
17 us sometimes, very rarely, but sometimes for MRI data. All this is  
18 is our giving them that data, but no, it's not data we use to sell  
19 advertising. Our advertisers would never look at MRI data to buy,  
20 no.

21           MR. COHEN: I just wanted to deal with your rare point,  
22 Your Honor, and that'll be a natural break.

23           BY MR. COHEN:

24           Q     Let's just run through some of the documents in this deck  
25 that you have the rare use of MRI data. Would you look at CV 81,

1 Page 7 of 10?

2 JUDGE SIPPEL: I got it right here, Giving Viewers What  
3 They Want.

4 MR. COHEN: I'm on 7 of 10, Your Honor.

5 JUDGE SIPPEL: 7 of 10.

6 BY MR. COHEN:

7 Q GSN viewers are 53/47, right?

8 A It's the same time frame, same study, same purpose.

9 Q By the way, is Cablevision an advertiser or a cable  
10 operator or distributor?

11 A As a distributor, Cablevision had the right to sell some  
12 of our up-time. I couldn't tell you, at this time, whether they  
13 were doing so or not, but in affiliate contracts, they get the  
14 right to sell some up-time.

15 Q You're saying that you provide information to affiliates,  
16 like Cablevision, MRI data that shows that you have close to an  
17 even split, right?

18 A Just to their ad sales forces, right.

19 Q Look at Exhibit 90, Comcast Spotlight.

20 A Mm-hm.

21 Q Comcast Spotlight is the advertising arm of Comcast,  
22 correct?

23 A Yes, sir.

24 Q And they sell advertising?

25 A Yes.

1 Q And 11 of 19, do you see that, sir?

2 A No. What am I looking for?

3 Q 11 of 19.

4 A 11 of 19?

5 JUDGE SIPPEL: GSN viewers are --

6 BY MR. COHEN:

7 Q 53/47, that's what you told Comcast ad sales, right?

8 A Yes.

9 JUDGE SIPPEL: Male 47; female 53.

10 WITNESS: We would have told all of our affiliates this  
11 if you get it from the same target.

12 BY MR. COHEN:

13 Q Could you look, please, at Exhibit 96? 96, New York  
14 Interconnect. Do you see that?

15 A Mm-hm.

16 Q New York -- just stay on the front page for a moment of  
17 96.

18 MR. COHEN: Are you there, Your Honor?

19 JUDGE SIPPEL: No, which page do you want?

20 MR. COHEN: First, I'm on the front page of 96.

21 JUDGE SIPPEL: Oh, front page.

22 BY MR. COHEN:

23 Q Do you know what New York Interconnect is?

24 A Yes.

25 Q It's Cablevision's ad sales team, correct?

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1 A Yes.

2 Q So in February of 2010, you gave a document -- GSN gave  
3 a document to Cablevision's ad sales team that said -- look at 13  
4 of 19 -- that the network was 52 percent male and 48 percent male,  
5 correct? And those were actually what MRI reported, correct?

6 A Yes.

7 MR. COHEN: Your Honor, I have a couple of more lines.  
8 I'm respectful of both -- the witness has had a long day, and I  
9 gather Your Honor has to leave, but otherwise, I'm prepared to keep  
10 going, but I'm not going to finish in the next 10 or 15 minutes, so  
11 whatever anybody's pleasure is.

12 JUDGE SIPPEL: Well, I'm prepared -- with the witness,  
13 I'm prepared to take a break. I don't know how long we've been on  
14 the record here, but --

15 MR. SCHMIDT: We've been on coming up on two hours now,  
16 Your Honor.

17 MR. COHEN: I've got about another hour, Your Honor.

18 MR. SCHMIDT: And we're going to have redirect, so I  
19 think it might make sense to adjourn at this point.

20 MS. KANE: We may have questions, Your Honor.

21 JUDGE SIPPEL: I'm so glad to hear that. That's fine.  
22 So we've got a lot of work to do over and above what we've done.  
23 We might as well start tomorrow morning and finish it.

24 MR. COHEN: Before we break, Your Honor, I just -- Mr.  
25 Schmidt and I discussed it. I just want to have even playing

1 rules. I think --

2 JUDGE SIPPEL: I want to be in on these conversations.

3 MR. COHEN: Yes, that's why I'm raising it, Your Honor.  
4 And I think the Enforcement Bureau might want to hear it, as well.  
5 I was hoping that we could get an instruction from Your Honor that  
6 counsel would not have discussions with their witness about  
7 cross-examination while the witness is on the cross.

8 MR. SCHMIDT: And what I said on that, Your Honor, is we  
9 have no objection to that. I do want to be able to talk to Mr.  
10 Goldhill about what I want to cover with him on redirect because I  
11 think that streamlines things and is entirely appropriate.

12 JUDGE SIPPEL: Why does that bother you? You don't trust  
13 him?

14 MR. COHEN: No, I do trust him, Your Honor.

15 JUDGE SIPPEL: You take Mr. Goldhill with you.

16 WITNESS: Am I allowed to comment on that, sir?

17 JUDGE SIPPEL: What can I do?

18 MR. COHEN: That arrangement is fine, Your Honor.

19 JUDGE SIPPEL: Okay.

20 MR. SCHMIDT: I think we have an agreement.

21 JUDGE SIPPEL: And again, he's not to talk with any other  
22 witness coming in from GSN.

23 MR. SCHMIDT: We understand, Your Honor.

24 JUDGE SIPPEL: Okay, even accidentally. We're going to  
25 resume at 10:00. By the way, you're still under oath, so --

1 WITNESS: Yes, sir.

2 JUDGE SIPPEL: -- you got to walk very carefully, and  
3 thank you very much. You did very well. Where are you on your  
4 schedule? Are you behind schedule?

5 MR. SCHMIDT: Yes. We hoped to have Mr. Goldhill done  
6 today. I think probably tomorrow, I'm still confident we can get  
7 through Mr. Goldhill tomorrow, and then I don't know how long you  
8 have planned for Ms. Hopkins.

9 MR. COHEN: It should -- the crosses after this witness  
10 should be a little bit shorter.

11 MR. SCHMIDT: A little bit, well I'm hopeful we can get  
12 through Ms. Hopkins tomorrow, as well, and maybe get Mr. Zaccario  
13 started. We're going to have Mr. Zaccario ready to go tomorrow.

14 MR. COHEN: Maybe we can keep the direct to a half an  
15 hour, but that's up to you.

16 MR. SCHMIDT: It's the objections that made my direct  
17 over limit, but --

18 JUDGE SIPPEL: Thank you very much. We're in recess.

19 (Whereupon, the above-entitled hearing went off the  
20 record at 6:10 p.m.)

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C E R T I F I C A T E

This is to certify that the foregoing transcript

In the matter of: GSN v Cablevision

Before: FCC

Date: 07-07-15

Place: Washington, DC

was duly recorded and accurately transcribed under  
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